

Volume 24

Page 4849 - 5036

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MAXINE M. CHESNEY, JUDGE

MARYLON BOYD, individually
and as Executor of the Estate
of CAMMERIN BOYD, deceased,
et al.,

Plaintiffs,

v.

CITY AND COUNTY OF
SAN FRANCISCO, et al.,

Defendants.

No. C 04-5459 (MMC)

San Francisco, California
Friday, September 21, 2007

TRANSCRIPT OF PROCEEDINGSAPPEARANCES:

For Plaintiffs: DALE K. GALIPO
21800 Burbank Boulevard
Suite 310
Woodland Hills, California 91367

For Defendants: Office of the City Attorney
City and County of San Francisco
1390 Market Street
Suite 600
San Francisco, California 94102

BY: BLAKE P. LOEBS
SCOTT WIENER
ERIN BERNSTEIN

1 Friday, September 21, 2007

2 (9:45 a.m.)

3 (The jury enters the courtroom)

4 THE COURT: Good morning, ladies and gentlemen.

5 JURORS: Good morning.

6 THE COURT: We're ready to proceed with the
7 defendants' closing argument.

8 Mr. Loebs, are you ready to go forward at this time?

9 MR. LOEBS: Yes, your Honor.

10 THE COURT: Very good.

11 MR. LOEBS: Good morning.

12 JURORS: Good morning.

13 MR. LOEBS: Cammerin Boyd, and no one else, is
14 responsible for the events that happened on Larch Way on
15 May 5th, 2004. Cammerin Boyd took the mind-altering drugs that
16 he was on that day. Cammerin Boyd didn't go to Atlanta as his
17 family wanted him to do. Instead, he took this loaded gun into
18 San Francisco (indicating).

19 Cammerin Boyd then went to the Tenderloin and
20 attempted to grab and kill Ms. Williams with a gun, this loaded
21 gun (indicating photograph). Cammerin Boyd then went to find
22 Tatanika Hogan, a woman he had no information about, someone he
23 didn't know. And then he threatened to kill her several times
24 with this gun, pointed it at her head, a gun we now know was
25 loaded. She was so terrified what he was doing she was

1 contemplating how she wanted her children to find her body.

2 After she fled from him in terror and was lucky enough
3 to contact police, Cammerin Boyd was the one that led the
4 police on that high-speed chase. He didn't pull over, he
5 didn't stop, he didn't surrender. And during the chase, he is
6 the one that fired this gun attempting to murder the officers
7 that were pursuing him. And we know this for a fact.

8 They then brought this horribly dangerous situation to
9 Larch Way. A place that he knew was heavily populated, had
10 children, families there. He drove this pursuit right to that
11 area. He stopped. He stopped where he would have the
12 confrontation with the police. And he knew there would be a
13 confrontation. How could he not? You're firing at police,
14 you're threatening a woman with a gun, and now you stop your
15 vehicle; of course he knew what was going to happen next.

16 He then, after doing all this activity, he got out of
17 his vehicle and he refused to get on the ground. Not because
18 he couldn't, but because he was not about to surrender. He
19 then put his hands up and put them down, knowing what the
20 consequences of that could be. He put his hands to his
21 waistband, when he had tried to murder a police officer a few
22 moments before, he's surrounded by police officers, pointing
23 their guns at him ordering him to the ground, and he puts his
24 hands to his waistband.

25 Then he doesn't get on the ground, doesn't keep his

1 hands in the air, instead he returns back to his SUV where he
2 knows his loaded gun is waiting. Then he sits in the SUV and
3 he reaches not just once but twice into the interior of the
4 SUV.

5 And finally, at that moment, he is shot and killed by
6 the police officers.

7 Cammerin Boyd left Officer Paine no choice. He had no
8 choice. Officer Paine and the other officers there gave
9 Cammerin Boyd every opportunity to surrender. In fact, you
10 heard from Mr. Cameron that they had given him far more
11 opportunities than they should have; at great risk to their own
12 personal lives and safety, they were trying to arrest him.

13 In this situation the officers have two means to try
14 to apprehend the suspect. They have their voice commands and
15 they have their guns. They can't use anything else when the
16 situation's gotten this serious. They used their voices for
17 all that they were worth. They yelled at him, all of them, to
18 get on the ground. To keep your hands up. And he didn't do
19 it. Why are they doing that? Because they don't want to have
20 to shoot this individual. They don't want to have to do it.
21 He forced Officer Paine to do that.

22 Now, as a result of Cammerin Boyd's conscious and
23 deliberate actions that evening, there are many victims that
24 were left in his path. Ms. Williams, who was threatened at
25 gunpoint. She didn't want to get involved in this. She didn't

1 want to even be here testifying. She didn't want to tell
2 anyone that this had happened to her. She's a victim that
3 shouldn't be forgotten.

4 Tatanika Hogan was threatened at gunpoint as well.
5 Imagine having a loaded gun pointed at your head and someone
6 telling you, I am going to kill you. I am going to kill you.
7 And then she begged for her life, even brought up her children
8 thinking maybe that will help. I'll appeal to this person as a
9 human being, tell him about my children, maybe that will help.
10 And what did she say his reaction was? He seemed to get off on
11 it.

12 Other victims of Cammerin Boyd that evening would be
13 the officers. The officers he tried to murder. You heard
14 Officer Elieff testifying about this event. Three years later.
15 You can tell when you listen to that CAD and you hear his voice
16 calling out the pursuit, and when you heard his voice saying,
17 "Shots fired, he shot at me," you could see how emotional he
18 got on the stand. That's because this was a life-threatening
19 event. Sure, they're police officers and, sure, they try to
20 train for these types of situations, but they're people and
21 they matter, and Cammerin Boyd was trying to murder them.

22 Other victims: Officer Stearns, Officer Kane. They
23 were also being shot at by Cammerin Boyd in the pursuit. And
24 in addition, Officer Paine and Officer O'Malley. Cammerin Boyd
25 put Officer Paine in a terrible position of having to shoot and

1 take another person's life. They did all they could do to
2 avoid that from happening. Cammerin Boyd made them do it. He
3 is also a victim of Cammerin Boyd's activities that evening.

4 But in addition, we also have the residents of Larch.
5 They were just in their homes minding their own business. They
6 didn't ask for this incident to come to Larch Way. They didn't
7 ask to be a witness to some parts of these events. They didn't
8 ask to then be dragged into this by the Police Watch and
9 Marylon Boyd and everyone else that had some sort of an agenda
10 against the police. They were just sitting there minding their
11 own business, and in 60 seconds or so they saw parts of this
12 unfold in front of them, which understandably could be
13 terrifying to see, they would be worrying their children, they
14 could not know what happened. But who did that? Did the
15 police? Did Officer Paine stage this? Did he plan this at
16 Larch Way or did he bring it there? No, it was Cammerin Boyd.
17 He did.

18 Now, in his closing remarks, Mr. Galipo said that this
19 is a very difficult case. It's not. It's a very easy case.
20 It's a difficult subject. It's a terrible subject. But it's a
21 very easy case. It's only difficult if Mr. Galipo was able to
22 convince you to ignore the facts and ignore the law.

23 So the question will be, when Cammerin Boyd was on
24 Larch Way, did he pose a lethal threat? Did he pose an
25 imminent, lethal threat?

1 Now, plaintiffs will have you think that he was just a
2 guy who wanted to trade cars with Miss Hogan. Do you remember
3 that? At least twice Mr. Galipo brought that up. Well, didn't
4 he just want to trade cars? You heard her videotape testimony.
5 You saw her break down in tears when she was pointing out and
6 identifying Cammerin Boyd, this man, the top middle, as the
7 individual who's threatening to kill her trading cars? Does
8 Mr. Galipo think that you completely ignore the testimony, that
9 you didn't listen to anything that happened in this case?
10 Trading cars?

11 And what was the other suggestion? That he wasn't a
12 lethal threat, he wanted to surrender. He wanted to comply,
13 but he just didn't do it because he had prosthetic legs. Or
14 the alternative, he had prosthetic legs that allowed him to
15 surrender the few days before, but those were the good
16 surrendering prosthetic legs, not the ones he had on that day;
17 so he was just in a bad situation and he just wasn't able to
18 surrender. We all know that argument for what it is. Gravity
19 applied to Cammerin Boyd that day as it applies to everyone
20 else.

21 If you have officers pointing their guns at you and
22 you have fired at them attempting to kill them, which is hard
23 for any of us to imagine, and they're ordering you to the
24 ground at gunpoint, you get to the ground. If you don't, you
25 know what the likely consequences will be. They can't take any

1 more chances. They can't take -- they shouldn't take as many
2 chances as they did with their own lives and their own personal
3 safety.

4 Couldn't get to the ground? He would have to go to
5 the SUV and put his hands where his loaded gun is to get to the
6 ground? And officers are supposed to believe that? They're
7 supposed to accept that, Oh, he said, I can't get down. They
8 heard that. Let's let him go back to where his gun is, he's
9 got prosthetic legs, let's let him go get his gun. Or be in
10 that area. He's just a guy who can't get to the ground.

11 Or, in the alternative, was Cammerin Boyd an extremely
12 dangerous, crazed, drugged out, violent man on a path of
13 destruction who had to be stopped before he killed someone?

14 Now, Mr. Galipo talked a bit about the burden of
15 proof. And I'm going to talk with you about it as well. And
16 in order to explain that, it's important to understand this is
17 a civil trial. And it's not a criminal trial. Mr. Galipo is
18 represents the plaintiffs. The plaintiffs have the burden.
19 This isn't a trial about Cammerin Boyd and whether he engaged
20 in criminal activity. It's not about sentencing Cammerin Boyd.
21 The plaintiff has the burden of proof, and what the burden of
22 proof is is that you have to come to this jury with a case this
23 serious, where in some sense you're accusing police officers of
24 executing a man.

25 If you're going to come into this court before you and

1 accuse officers of something that serious, you'd better have
2 the facts to support it. You can't just ask questions. You've
3 got to have answers. You can't just try to poke holes in the
4 defense theory and just examine Mr. Jason for eight hours and
5 think, Well, this little bit of evidence, well, what about
6 that. That's not a theory. That is not meeting the burden of
7 proof. The plaintiffs have the burden of proof.

8 And isn't it interesting that the only time you ever
9 saw any diagram that attempted to show you what Larch Way
10 looked like was through the defendants. The only time you had
11 a witness who attempted to describe with a tape measure device
12 where the wound paths were on Cammerin Boyd was through the
13 defendants. Isn't it interesting that the defendants took,
14 even though they didn't have it, the defendants took on the
15 burden -- not the burden, but the defendants showed you what
16 happened in this instance. And the plaintiffs, they just asked
17 questions. It was all just about confusion and misdirection.

18 Lastly, plaintiffs have to have a theory of the case.
19 You probably are asking yourself in opening, what are they
20 saying happened? You know, what are they claiming these
21 officers did? Were his hands up or were they -- was he putting
22 his hand in the car? Which was it? They have to make up their
23 minds.

24 The defendants, although we presented a lot of
25 evidence and I'll argue today quite extensively about what that

1 evidence I believe shows, the defendants don't have the burden
2 to prove anything to you. Anything. If no one said anything
3 in this case, if we just stood up here and stared at you for
4 six weeks, you'd be obligated to find for the defendants.

5 Plaintiffs have to sway you and convince you that on
6 that day, Officer Paine and Officer O'Malley -- who I don't
7 understand why Officer O'Malley is in this case, but Officer
8 Paine and Officer O'Malley, they have to convince you that they
9 used unreasonable force. They have the burden of convincing
10 you of that.

11 And that goes back to my next question: What is their
12 theory? We've had six weeks of trial. They had lots of
13 depositions, lots of interviews, for years, to figure out what
14 the theory was they were going to present to you in this trial.
15 And they still haven't figured it out. I don't know what their
16 theory is. Is it that Officer Paine executed Cammerin Boyd
17 while his hands were up surrendering? Well, they brought some
18 witnesses to say that. And we know from the physical evidence
19 that's impossible. But they still seem to be arguing that.

20 Or that Officer Paine overreacted when Cammerin Boyd
21 was moving his hands in the vehicle. Maybe that's their
22 theory. I don't know.

23 But one thing was clear in Mr. Galipo's closing
24 remarks yesterday: That regardless of which theory or some new
25 theory that they're pursuing, there's one overriding argument

1 that they're making. And that is that all of the evidence that
2 hurt the plaintiffs' case is explained by a conspiracy. That's
3 what Mr. Galipo told you yesterday. It's all a conspiracy.
4 All the police officers got together. Dr. Smith got together.
5 All of it, just so plaintiffs couldn't prevail in this lawsuit
6 because they knew the individual that was shot, the mother was
7 a lawyer. That's how they explained all the evidence that is
8 bad for them in the case.

9 Now, there's a maxim with trial attorneys about how
10 you can tell when someone has a weak case. The maxim is, if
11 you're strong on the facts, you argue the facts. If you're
12 strong on the law, you argue the law. If you're weak on the
13 law and the facts, you just argue.

14 But there's a new one that should be added as well.
15 If even arguing and misdirection isn't enough, then you get to
16 the lowest form of argument you can, and that is, conspiracy.
17 Sure, all the evidence stacks up against us. It all looks like
18 we have no case at all. The explanation is, it's a conspiracy.

19 And what are they arguing about the conspiracy? The
20 gun was planted. This is simply amazing. They're arguing the
21 gun was planted in the car. Well, there's one fact that I
22 don't know how they're going to explain -- well, this is a
23 little bit of a different issue. But if the gun's planted, and
24 everyone's saying he's reaching under the seat, why wouldn't
25 they stick it under the seat? Why would they stick it in the

1 open door?

2 But more importantly, what about the bullet that was
3 100 percent positively identified to this gun that was found in
4 Cammerin Boyd's car that was found in an apartment on Scott
5 Street?

6 You've seen this diagram a bit before. Here's the
7 apartment, on the second floor, Apartment Number 1, that had
8 this bullet found inside the apartment. Fired from this gun.
9 Now, how, if the police planted the gun in Cammerin Boyd's
10 vehicle, did they get a bullet from this gun, this .45 caliber
11 Hi-Point, in that apartment? Of course they didn't. Of course
12 there's no conspiracy to plant the gun.

13 But the reason the plaintiffs have to argue that the
14 gun was planted is because when you're evaluating whether
15 there's an imminent lethal threat, knowing he shot at police
16 officers and you know there's a gun right in that car, inches
17 away from his hand, you'll know that any movement he makes
18 while he's in that car, any movement, as Mr. Cameron explained
19 to you, any movement, poses an imminent lethal threat. So
20 contrary to all common sense, contrary to all facts, and
21 completely ignoring that the bullet from that gun was found on
22 Scott Street, they have to argue the gun was planted. And.

23 What's their evidence of that? That on that evening,
24 8 o'clock in May, which is not broad daylight, 8 o'clock in
25 May, in the 30 seconds or so when the officers had to evaluate

1 this incredibly high tense situation, that when they were
2 looking at Mr. Boyd in the car, they didn't see and recognize
3 the butt of this gun for what it was. That's their entire
4 basis for the theory that the gun was planted.

5 Now, in order for that theory to work, I'm going to go
6 through all the different individuals that have to not only be
7 not remembering, not only be confused, but have to outright
8 have lied to you.

9 Officer Jonas, if you recall, he testified that he
10 arrived on the scene when officers still had their guns drawn.
11 The shots had just been fired. He was one of the first ones,
12 if not the first one, to the vehicle, and he immediately saw
13 the gun in this location in the pocket of the door. So for
14 their conspiracy theory to start out the gun was planted,
15 Officer Jonas has to be a liar. Not just mistaken, he has to
16 be a liar. In fact, he said he actually guarded the gun
17 because he realized its significance.

18 Officer Mason, who also saw the gun shortly after the
19 shots were fired, he has to be a liar too.

20 Also remember Inspector Gee, he's the individual that
21 took possession of the gun, that counted the rounds in the gun,
22 that found the safety off and one in the chamber, that kept it
23 in his possession until he examined the gun. He must be lying
24 too.

25 Sergeant Riggle, who also saw the gun at the scene,

1 according to their conspiracy theory, must have lied.

2 In addition, you have Officer Paine and O'Malley,
3 Elieff, Stearns and Warnke, they apparently all got together
4 and decided to tell the same story and make up some turning
5 motion because it's a conspiracy. That's what the plaintiffs
6 are asking you to believe.

7 This was also interesting. I believe Mr. Galipo said
8 Dr. Smith seems like a nice man, or words to that effect, and
9 then he called him a liar. Then he said that he's part of the
10 conspiracy, too, because he met several times with Inspector
11 Spillane and apparently got Dr. Smith's opinion that the gun --
12 that the shots happened while Mr. Boyd was seated in the SUV
13 based on the wound paths. An injury to the left hand,
14 apparently that's just to help the police officers. That's not
15 really his opinion because he's part of this conspiracy too,
16 apparently.

17 And isn't it interesting that their own expert,
18 Dr. Bonnell, we must have got to him as well. If you remember
19 his testimony, he testified about the wound paths and the
20 trajectories, and his testimony was identical to that of
21 Dr. Smith's. He agreed that the wound path through the left
22 leg, that the left leg was parallel to the ground, would be a
23 downward trajectory of 5 to 10 degrees. He also testified that
24 if the left hand was connected to that wound, it would be down
25 lower than the exit wound, which, if seated on the floorboard,

1 would be 23 inches off the ground, and the hand would have to
2 be lower than that for the wound paths to be the same.

3 But another interesting thing Dr. Bonnell testified
4 to, as I also asked him about the path through the abdomen. I
5 said, You're sitting there, with your understanding of the
6 wound path through the abdomen and the trajectories, is it
7 possible for someone to be seated as I am now, leg parallel to
8 the ground, and the body twisted to the left, the left hand in
9 this location, to sustain those wound paths? And he said, Yes,
10 that's consistent. That's the testimony of Mr. Jason, the
11 testimony of Dr. Smith and the testimony of Dr. Bonnell.

12 And here's an interesting thing: If you think back to
13 yesterday's closing arguments, one name you never heard
14 mentioned one time. Not even once. Is Dr. Bonnell. Who the
15 plaintiffs called. They said, here is an expert about wound
16 paths and trajectories. Listen to what he has to say. This is
17 important, you can rely on this. And then what he says
18 completely undermines their case and their theory. So sweep
19 him out of the way, don't mention his name anymore. I guess
20 he's part of the conspiracy.

21 In order for there to be no gun in Mr. Boyd's car, it
22 must mean that he didn't have a gun that day and he wasn't
23 threatening anyone with a gun. Because, otherwise, what
24 happened to it? Did he throw it out the window? No evidence
25 of that. Was it just a coincidence that a gun was recovered, a

1 black gun such as this, that Miss Williams said was pointed at
2 her head? Well, their explanation for that, although
3 Mr. Galipo didn't quite come out and say it, is that, well,
4 Ms. Williams, she must have cut a deal somehow to get leniency.

5 You heard her testimony by videotape. And you will be
6 evaluating whether she is credible, or whether she seemed like
7 she wanted to be here involved in this situation, and whether
8 she was telling the truth to get something, or was she telling
9 the truth or is she telling a lie, as far as conspiracy goes.

10 Miss Hogan also, she's got to be part of it as well.
11 Apparently, since they're not together, to say the incident
12 didn't happen to Miss Hogan, that's when he resorts to trading
13 cars, just a big misunderstanding. Maybe Cammerin Boyd was
14 just showing her the gun. Just, would you trade cars with me?
15 She got the wrong idea when the gun was pointed at her head,
16 that he wanted to kill her. Apparently when he had a gun and
17 pointed it at Ms. Williams and Ms. Hogan, and then they're
18 saying this is a different gun, I guess, pulled out of the sock
19 of a police officer? I don't know.

20 Lieutenant Spillane, they're suggesting maybe that
21 he's the mastermind of this whole conspiracy. I guess
22 Mr. Jason, he's also involved too because of the high velocity
23 blood spatter that he saw in examining the vehicle, which
24 incidentally their expert Mr. Firestone didn't even examine.
25 They come in here and say there's no high velocity impact

1 spatter there because our guy looked at some poor photographs.
2 He couldn't see it.

3 Why didn't you come look at the car? Two reasons come
4 to mind. One is they know what they would find. If the
5 evidence is harmful to your case, ignore it. Don't look at it.
6 Because if he came and looked at that car and he found the same
7 thing, then you would have another perhaps, if you knew what he
8 was talking about, another Dr. Bonnell situation. But don't
9 look at the car. In fact, with Mr. Firestone, don't look at
10 anything. Don't go to the scene, don't examine the physical
11 evidence, and when he first gave his opinions, don't even look
12 at photographs. Give us an opinion without doing that because
13 we don't want the facts to interfere with what you're going to
14 say.

15 This gets to my next thought, that it's not really
16 about conspiracy, it's not about anything other than trying to
17 confuse you, trying to deceive you with what the evidence is,
18 misdirection through the questioning of the witnesses the way
19 they were questioned. Almost like this case is flipped on its
20 head and the defendants have the burden, and they think they
21 can just poke holes here and there, and say, Huh, I wonder
22 about that, maybe that the bit of blood, maybe that doesn't
23 make sense. Or what about this. And then at the end of the
24 day, what are you supposed to do with that? They're hope is,
25 they're all confused, we'll just give the plaintiff the big

1 verdict, we're all confused.

2 That's not how the burden of proof works. They have
3 an obligation to convince you of what happened.

4 Misrepresentation is also a huge part of the
5 plaintiffs' attempt to prevail in this case. And let me give
6 you one of the most clear examples if you recall yesterday,
7 Mr. Galipo made a big point out of telling you, I wanted to get
8 it right. So I got an order of trial transcripts of the
9 critical witnesses' testimony, because I wanted to make sure I
10 represented correctly to you exactly what they said.

11 And then he brought out the transcript of Joe Campos,
12 whom you all heard testify. And you heard the way in which he
13 testified. And you may have noticed during the direct
14 examination, Mr. Galipo was very careful never to ask him
15 whether at the time the shots were fired, whether he was
16 sitting or standing. He also never asked him questions about
17 he's in the area of the open door, he's around the open door,
18 what happened next? Never asked him that question. In fact,
19 one time Mr. Galipo slipped, and Mr. Campos did say he was
20 sitting, Mr. Galipo quickly went onto something else because he
21 did not want to hear that.

22 You didn't learn that at the time the shots were fired
23 that Mr. Campos saw Cammerin Boyd seated in the SUV until I did
24 my examination of him. And just asked him, he said, Yeah, he
25 was sitting down as I am now, with his leg parallel to the

1 ground as I'm sitting right now. He was seated, and didn't use
2 the term "floorboard," but what does this matter. He was
3 seated on the edge of that car and he described precisely how
4 he was doing that. But only because I asked him those
5 questions.

6 But then Mr. Galipo, because he didn't get by with the
7 confusion of the witness during his direct examination, because
8 he didn't get him to say what he wanted, then he comes to you
9 in his closing arguments and he completely misrepresents what
10 Mr. Campos's testimony was. If you recall yesterday,
11 Mr. Galipo came up here yesterday and said, Do you know what
12 Mr. Campos said? He said that Cammerin Boyd was standing with
13 his hands raised. Well, you know, Mr. Campos did say that.
14 But you know when he said that? That was when he saw Mr. Boyd,
15 outside of the car, taking off his do-rag.

16 This is what Mr. Galipo read to you: "When he had his
17 hands up, where was he in relation to the vehicle?

18 "Next to it.

19 "And he was standing when he had his hands up?

20 "Yes."

21 Later discussion: "When the individual had his hands
22 up at that time, if you can recall, was his do-rag already off?

23 "A Yes. That's when he walked forward and took it off, he
24 had his hands, he went like that, motioning, tossing the do-rag
25 down towards the ground, somewhere right here.

1 "Q And then he went back at some point, he was in the area
2 of the open driver's door.

3 "A When he went back."

4 That's what he's talking about when he was standing
5 with his hands up. When he was taking the do-rag off walking
6 around by the side of the car.

7 Mr. Campos could not have been more clear when asked
8 that Cammerin Boyd was seated.

9 And here's another portion of his testimony Mr. Galipo
10 didn't read to you:

11 "Q And after you saw him walk back to the open driver's
12 door, what did you see him do next in terms of his body
13 position?

14 "A He leaned on the driver's door, making a seat position.

15 "In a seat position?

16 "Yeah.

17 "When you say 'seat position,' you mean sitting like
18 you are now?

19 "Yes.

20 "With your legs like they are parallel to the ground?

21 "A Yes."

22 That's what Mr. Campos testified to.

23 But that doesn't serve the plaintiffs' purposes, so
24 they couldn't confuse him in trial so they misrepresented to
25 you what he actually said hoping you maybe didn't pay

1 attention, hoping maybe I wouldn't catch it. I don't know.

2 Now, one other thing I want to discuss before I talk
3 in some detail about the verdict form and the questions you're
4 going to answer in this case and how the facts came in with
5 respect to that issue. Is a comment that Mr. Galipo made that
6 I feel I just have to address. He said to you that the reason
7 that he called Mr. Campos to testify is -- implied it was out
8 of some civic duty he felt to give you all the facts, give you
9 all the information, even if it's harmful to his case, put it
10 all in front of you so you can judge the case as it is. Didn't
11 want to hide from any of the evidence.

12 Well, if that's true, then why when Mr. Galipo was
13 examining Mr. Campos didn't he ask him whether he was sitting
14 or standing when he was back in the SUV? Why did he dance
15 around that question and wait for me to ask it? If that's
16 true, why did Marylon Boyd go to Mr. Galipo and tell him he
17 didn't have to testify (sic) when he had a court-ordered
18 subpoena compelling him to testify. Why do that if you're
19 interested in getting all the information, all the facts to the
20 jury?

21 And isn't it interesting that she never took the stand
22 and denied that. She never said, No, as a lawyer, I didn't,
23 you know, and intimately involved in this case, I didn't go to
24 a key critical witness in this case and tell them not to honor
25 their court subpoena. I didn't do that. She didn't say that

1 at all. And her failure to say that speaks volumes.

2 Why did they call Mr. Campos? That's the way the
3 trial has worked. The plaintiffs get to go first. And if they
4 can call a witness first, they get their first crack at him.
5 They can confuse him, they can trip him up, get him to say
6 something he doesn't mean to say. And, hopefully, that will
7 help their case. That's why they called him. Not out of some
8 interest to give you all the facts, and you know that.

9 Now, a few other examples that I'd like to give that
10 completely run in the face of this suggestion that they're
11 interested in giving you all the facts of the case so you can
12 evaluate it. Remember the 1993 incident in which Cammerin Boyd
13 lost his legs? The 140-mile-an-hour CHP pursuit. If you
14 remember back to the beginning of this case, you heard from
15 four plaintiffs' witnesses talking about the accident, talking
16 about how tragic it was. None of them mentioned anything about
17 how that accident occurred. None of them.

18 Even Ms. Boyd, when she was talking to you about it in
19 detail, about the effect it had on Cammerin Boyd's life, never
20 mentioned at all how that happened. That didn't come up until
21 cross-examination. Then she hemmed and hawed, maybe it wasn't
22 a high-speed chase, she didn't know. You didn't really learn
23 about it until we called the CHP officer that Marylon Boyd sued
24 for the loss of her son's legs because he was running at 140
25 miles an hour from the police. Is that trying to give you all

1 the facts so you can judge a case?

2 In addition, it's interesting that plaintiffs didn't
3 call Fatima Wilson. Fatima, who's been a witness in this case
4 from the very beginning, was interviewed at least four times,
5 had her deposition taken at length. Plaintiffs certainly knew
6 who she was. And she had met the family members, she talked
7 with everybody. She had met many times with the attorneys,
8 she'd met with the investigators. Why didn't they call her?
9 Because she says at the time the shots were fired, Cammerin
10 Boyd was reaching into the vehicle like he was trying to get
11 something. And they didn't want you to know that.

12 Why didn't they call Officer Elieff? Why didn't they
13 play the dispatch tape for you? That certainly would be
14 information if someone's trying to give you all the facts you
15 want to hear. Why did you have to wait until the defendants'
16 case to hear that?

17 But some of those issues are a little bit beside the
18 point, as to what the plaintiffs' attorneys was doing or what
19 their approach was to the case and why they took the case.

20 What matters in this case is what you're going to
21 answer when you get back and you're evaluating the case in your
22 deliberations. And the first question you're going to have to
23 answer on the verdict form is Question Number 1, and it reads
24 exactly like this: "Have plaintiffs proven by a preponderance
25 of the evidence that either Officer Timothy Paine and Officer

1 James O'Malley used unreasonable force on Cammerin Boyd on
2 May 5th, 2004, on Larch Way?"

3 Right away one thing you will notice is that this
4 relates to what happened on Larch Way. There is no claim being
5 made that the shot that Officer Paine fired at Pierce and Turk
6 was an unreasonable use of force. And when we get to the
7 verdict -- the jury instructions, I think you'll see why.
8 Because it's absolutely clear that Officer Paine's entitled to
9 and it was appropriate to take that shot to stop the threat of
10 Cammerin Boyd at that time, both in terms of the fleeing felon
11 rule and the high-speed pursuit rule, and we'll talk about that
12 in a bit.

13 But this is the question you'll have to answer. And
14 on the verdict form you'll have a space where you answer it yes
15 or no as to Officer Paine. And then you'll answer yes or no as
16 to Officer O'Malley. And again, why Officer O'Malley is
17 involved in this, I don't have -- I'll guess, but we'll leave
18 that for a later discussion. Because there's no suggestion
19 Officer O'Malley ever, his bullets ever struck Mr. Boyd.
20 Mr. Boyd was out of the car well after Officer O'Malley fired.
21 He was standing around uninjured, still not surrendering, and
22 then Officer Paine, it is agreed and stipulated to, fired the
23 lethal shots. So why he's been here and had to have been
24 dragged through this, I'm not sure.

25 But this is the question you'll have to answer.

1 And now what I'd like to talk about, since it's really
2 the focus of the whole case, as to Question Number 1 as it
3 relates to Officer Paine, and that question is, Did plaintiffs
4 prove that Officer Paine used unreasonable force?

5 Now, for much of the presentation I want to make
6 today, I'll talk about first what the standards are for
7 evaluating use of unreasonable force. And Mr. Galipo referred
8 to those a bit in his closing remarks.

9 Then I'd like to talk about what is evidence and what
10 is not. In other words, how to evaluate the evidence that came
11 in related to that issue.

12 And then later on, as you'll see through the
13 presentation, I'm going to talk about the various evidence that
14 came in and whether it supports plaintiffs' establishing that
15 Officer Paine used unreasonable force or whether it doesn't.

16 So, first -- next, let's talk about what the test is
17 for unreasonable force. You heard Mr. Cameron and Mr. Galipo
18 describe this as an objective standard. It's an objective
19 standard. It's not what the officer had in mind at that
20 moment. For good or bad, that's not what you're evaluating.
21 What you're evaluating is if you take a hypothetical officer,
22 not just an individual but a hypothetical police officer, and
23 put them in the same position and understanding what that
24 officer understood or knew through his own personal
25 observations, or through those that he learned through the

1 police communications, you put yourself in Officer Paine's
2 shoes and say, Under those circumstances, was it appropriate to
3 use lethal force?

4 Some of the things that you'll be instructed that you
5 must keep in mind when doing this evaluation is that officers
6 must make split-second decisions. They often don't have the
7 luxury of time. We have been litigating this case for years.
8 You have been listening to this case for six weeks, which is a
9 long time. You've heard mountains of evidence. We've had
10 piles of exhibits and blowups you've been evaluating. And
11 you're trying to evaluate something that happened in maybe 10,
12 15 seconds. 10 or 15 seconds. That's the amount of time,
13 probably even less than that, that Officer Paine had to make
14 this decision.

15 Officers, when they're making decisions, don't have
16 the luxury of time. They have to act right away. And one of
17 the most important factors to consider is that they do not have
18 the benefit of 20/20 hindsight. This will be specifically in
19 the instructions you receive. They have to make a decision
20 based on what they have, the facts they know, at the time. Not
21 based on 20/20 hindsight. And Mr. Cameron, I think, explained
22 that pretty well.

23 Another factor that is irrelevant to the objective
24 analysis is what is Cammerin Boyd thinking. Now, we've
25 presented some evidence through Dr. Keram and through other

1 witnesses that relate to whether Cammerin Boyd was suicidal or
2 not. But in terms of evaluating what the officer did and
3 whether what the officer did was appropriate, not only don't we
4 consider that issue, that really goes to whether he was
5 reaching or not, but even if Cammerin Boyd wasn't attempting to
6 reach for a gun, even if he had in his mind that, I'm just
7 going to put my hand over here for whatever reason, I'm going
8 to just grab something under the seat, I want to show the
9 officer some sunglasses or I'm getting tired of having my hands
10 up, I want to put them down over here, or I want to get down to
11 the ground, whatever he had in his mind when he moved his hands
12 when they were up to inside the vehicle is irrelevant. Because
13 it all has to do with the perception of the officer and the
14 threat that they see at that time. And that's the way in which
15 you have to evaluate the officers' actions: What did they see?
16 What did they perceive?

17 Another factor that's important in evaluating the test
18 for unreasonable force, which plaintiffs again have the burden
19 of proving, is you only consider the force that's used as to
20 Mr. Boyd. There have been arguments that have been made about
21 mythical passengers in the SUV. Well, maybe you shouldn't have
22 shot because you hadn't cleared the SUV to make sure there
23 wasn't anyone inside. Completely irrelevant. Because this
24 case is brought by Cammerin Boyd's family, and it's about the
25 force used as to him. Not to anyone else.

1 Also, it's not as to mythical or bystanders on Larch.
2 You cannot evaluate, you're not permitted to evaluate, the use
3 of force in this case in terms of whether or not it presented a
4 danger to anyone else other than Cammerin Boyd. And you'll be
5 instructed on that.

6 Another factor that's relevant that will also be part
7 of your instructions is that this is not an issue of good or
8 bad tactics by the police officers. For example, you've heard
9 a lot of testimony about whether -- where Officer Paine was and
10 whether he had cover at the time that he fired his shots. The
11 argument could be that because he's more exposed, he was put in
12 more fear by a sudden movement by Cammerin Boyd. That is
13 irrelevant.

14 The only thing you're allowed to evaluate is whether
15 or not Cammerin Boyd's actions and his movements would have put
16 a reasonable officer in imminent fear of death or serious
17 bodily injury. That's what you're to evaluate. And whether he
18 should have had cover, whether he had cover, where the officers
19 were positioned, should they have called out on the radio and
20 said something to someone, should they have -- one officer told
21 another what was happening, although we discussed those things,
22 and we presented evidence that everything the officers did was
23 appropriate, that really doesn't factor into evaluating this
24 issue; and that is, Did Officer Paine use reasonable force?
25 And as I said, there will be a specific instruction related to

1 that as well you'll receive.

2 Now, in evaluating this issue, and that is, Did the
3 plaintiffs prove that Officer Paine used reasonable force,
4 there are several things that I think you need to consider.
5 Putting yourself in Officer Paine's shoes, with the information
6 that he had that was available at the time, and what he
7 observed, what he had heard over the radio, it would be
8 reasonable for Officer Paine to believe that Boyd had a gun in
9 the SUV. I think that is pretty much undisputed. That in that
10 circumstance it's reasonable for him to believe that Cammerin
11 Boyd has a gun in the SUV and that he's prepared to use it to
12 kill police officers.

13 It's also reasonable to assume Mr. Boyd moving his
14 hands into the SUV would be an imminent threat. Why is that?
15 If it's reasonable that he has a gun in the SUV, then moving
16 his hands into the SUV is an imminent lethal threat. And how
17 do we know this? Well, in evaluating it, you look at how it
18 would appear to the officer based on the movement. Or any
19 movement. The hands are up, the hands are somewhere, and he
20 makes a movement, how is that going to appear to the officer?
21 Now, what he was actually reaching for, what was he actually
22 doing, but how would that appear? And I believe that's
23 undisputed that that's the test as well.

24 And next we'll look at -- do these one at a time. As
25 I said, what Boyd was thinking is irrelevant. Mr. Clark

1 actually agreed that this would be the standard, that if
2 Cammerin Boyd, after everything is happening, is back in the
3 SUV and he makes a move into the SUV, then the officers would
4 be entitled to use lethal force at that time, and they do not
5 have to wait and see a gun.

6 Mr. Cameron made this clear as well, that that's the
7 way in which police officers are trained. That an individual
8 has fired at police, is not compliant with commands, and makes
9 any move into the vehicle where the officer reasonably believes
10 a gun is located, then the officer's entitled to use lethal
11 force. That is the imminent threat.

12 And as I mentioned earlier, how many chances did the
13 officers have to give Mr. Boyd? He was out of the car. He
14 didn't get to the ground. He's out of the car, he had his
15 hands up, he didn't keep them up. He came back to the car
16 where his loaded gun was. Now he's sitting in the car and he
17 has his hands where the officers can see them. If he does
18 anything else at that point, probably before then, he'd given
19 the officers more than ample cause to fire. But at that point
20 if he does anything with those hands, moving towards the car in
21 any way, the officers, Officer Paine, is entitled to use lethal
22 force to stop that threat.

23 And the question is, How much more did the officers
24 have to do to risk their lives to get him an opportunity to
25 surrender? What else did they have to do? What else could

1 they have done? They're yelling at him, he's not obeying them.
2 He's reaching into the car and Officer Paine lets him reach
3 once, still doesn't shoot. So with respect to this issue, when
4 Mr. Boyd is moving his hands into the SUV, would that be an
5 imminent lethal threat? I think the answer is yes, of course
6 that would be, under these circumstances.

7 So -- and as I explained further, Officer Paine did
8 not have to see a gun in Boyd's hands before firing. This is
9 undisputed, as Mr. Clark reluctantly agreed to that, and
10 Mr. Cameron explained that as well. So the test is not whether
11 or not he had a gun in his hand. The test is going to be
12 whether he moved his hand into the SUV.

13 Now, next what I'd like to talk about, now we've
14 talked about the view of the evidence as to what is the -- what
15 is the factual issue that you're going to need to resolve in
16 this case as to Officer Paine's conduct. What is the fact
17 that, when you go back to the jury room, are you going to try
18 to figure out? What is the critical fact that happened? I
19 believe the critical fact that was explained is, when Officer
20 Paine fired, did Mr. Boyd move his hands in the vehicle?
21 That's the issue. That's the fact that you have to elaborate.
22 And really, that's it.

23 Now, so this Question 1 as to Officer Paine: Did
24 plaintiffs prove that Boyd was not moving his hands into the
25 SUV when Officer Paine fired?

1 Now I have it phrased this way with the "not"
2 highlighted in blue because that's the plaintiffs' burden. In
3 order to prevail, they have to show that he did not move his
4 hands into the SUV when Officer Paine fired. Because if he
5 did, then that is an imminent lethal threat for the reasons I
6 explained before. Officer Paine not only is entitled to but
7 should fire his weapon to stop that threat.

8 So that's the critical factual issue you'll have to
9 decide.

10 Now, before I get into the actual evidence in the case
11 that relates to that factual question, I want to talk for a
12 minute about what is evidence and what is not.

13 What is evidence? You probably have a pretty good
14 idea of that already. And what is not. What is evidence?
15 Testimony of credible witnesses is evidence that you can rely
16 on in evaluating this critical factual issue as to whether
17 Cammerin Boyd is moving his hand into the vehicle when Officer
18 Paine fired.

19 Physical evidence. Obviously evidence you can
20 evaluate.

21 The opinions of qualified experts. Also evidence you
22 can evaluate on this critical issue.

23 What is not evidence?

24 Opening statements, closing statements, what I'm
25 telling you, what Mr. Galipo told you, is not evidence. I'm

1 discussing the evidence with you, but what I say does not count
2 as evidence. What Mr. Galipo says does not count as evidence.
3 And that's true for the entire course of the trial. The
4 questions that I ask, the questions that Mr. Galipo asks are
5 not evidence. It might sound like there's some basis for it.

6 For example, Mr. Galipo asked Officer Moody, did you
7 ever put a gun to Cammerin Boyd's head and threaten to kill
8 him? Officer Moody said, No. You hear that question, say,
9 Boy, he must have some basis for asking that? Turns out he
10 didn't have any. But the question itself doesn't count. It's
11 the answer. And you've heard a lot of times a lot of instances
12 where there was a question asked with inflection or tone of
13 this is evidence the attorneys are providing or it's something
14 the attorney knows because otherwise why would he ask the
15 question that way. He doesn't count. It's misdirection and
16 confusion. What counts is what the witnesses tell you. That's
17 evidence.

18 Insinuations, gestures, especially the gestures
19 that we've had many of that the witnesses aren't following when
20 they're answering the question. So how were his hands when you
21 first saw him? How many times did we see that? After he got
22 out of the car and you saw him, what did he do next, suggesting
23 that what Mr. Galipo is doing is the witness's testimony, which
24 it wasn't at all, in most instances.

25 Insinuations to the questions about tone of voice by

1 the attorney, that Mr. Galipo is incredulous at the answer he's
2 getting. Not evidence.

3 Hypotheticals based on made-up facts. Also not
4 evidence. I'll give you a couple of examples. When Mr. Galipo
5 was talking about Ms. Williams, he posed hypotheticals to, I
6 think it was Dr. Keram. He said, Would someone doing a U-turn
7 be an indication that they were suicidal? And he's talking
8 about the incident with Miss Williams. She never said it was a
9 U-turn. She said he was spinning donuts in front of the
10 Tenderloin police station. A U-turn is completely made up in
11 the question. But it doesn't count as evidence.

12 And this is perhaps the most glaring example of what
13 is not evidence through an attorney's questioning. Death
14 threats at gunpoint to Miss Hogan became merely a request to
15 trade cars. If you remember the first time this came up, I
16 believe it was Mr. Brass, Mr. Galipo said, Well, what if, you
17 know, instead of pointing a gun at someone and threatening to
18 kill them, the person merely asked to trade cars; would that be
19 a crime? He said, No. And I think Mr. Galipo said, I forgot
20 to put the gun part in. It's kind of important. Well, it
21 isn't in there. He did the same thing with Dr. Keram, if you
22 recall. He called it a request to trade cars. Not evidence.

23 The next presentation, which is really the reason I
24 have this up here and why I'm doing closing argument this way,
25 is because I want to present to you in sort of a visual form a

1 graphic that will show the question, the important question the
2 plaintiffs have to prove to you to prevail, and on one side the
3 evidence that comes in to support it, and on the other side the
4 evidence that's against it.

5 This is rather important. The argument by plaintiffs'
6 counsel was that reaching into the SUV is merely lowering the
7 hands. When we were evaluating the movements of Mr. Boyd, it's
8 the movement that matters. It's not anyone's description as to
9 what they thought was in his mind; it's the movement. And the
10 movement is all the officers see and all they know. And that's
11 how you evaluate whether it's a lethal threat.

12 So this is the structure I'm talking about that I want
13 to use to discuss the evidence that came in in this case. And
14 the question I have is, Number 1, Did plaintiffs prove that
15 Boyd was not moving his hands into the SUV when Officer Paine
16 fired? That's the critical factual issue that you need to
17 resolve one way or the other. And the plaintiff has the burden
18 on this. There is no dispute about that. And what I'll talk
19 about is the evidence that was presented by the plaintiffs that
20 they thought answered this question in the affirmative, that
21 the suggestion was, Okay, here, listen to this evidence, this
22 will prove this critical issue, and that's the reason we should
23 prevail.

24 And then we'll talk about the evidence that went
25 against that proposition. And the reason it's structured this

1 way is because the plaintiff has to prove this point.

2 Plaintiffs have to win. They have to load up this side of the
3 ledger. They have to tip the balance more than 50/50 and
4 convince you that this proposition is true.

5 Now, what I'd like to talk about first are the Larch
6 Way witnesses. And if you recall in my opening remarks, I
7 suggested that in evaluating the witness testimony and the
8 evidence in this case, it's important to keep in mind the
9 perspective that those witnesses had. At this point I'm not
10 talking about bias or anything like that. I'm just talking
11 about the perspective they had when this incident came into
12 their home. When this came into their backyard.

13 And other things, factors that have influenced that
14 perspective. And this is true of all of the Larch Way
15 witnesses. Their perspective. They saw maybe 60 seconds at
16 most, the tail end of this incident. They had no idea that he
17 had a gun in the car or he'd been shooting at the police. No
18 idea. They were just at home, minding their own business,
19 working on their computer, doing whatever, and this came
20 roaring into their neighborhood. They didn't know what
21 happened before. The reason why that's important is because
22 when they're looking at this event, they don't have nearly the
23 same information the police officers do in being able to
24 evaluate whether a movement poses a lethal threat. They don't
25 know that he has a gun. They don't know he's recently

1 attempted to murder police officers. They don't know that he
2 had threatened Tatanika Hogan with a gun. They don't know
3 anything about that. They just see what maybe looks like a
4 traffic stop coming into the neighborhood.

5 And also their perspective of course, there are a
6 number of outside influences that may alter their perspective.
7 If you recall the testimony was that right after this incident
8 happened, that neighborhood was descended upon by an
9 organization called Police Watch. According to testimony, this
10 organization had people out interviewing, taking pictures,
11 right away. Because this is an organization that is hostile to
12 police and they wanted to get involved in this incident from
13 the get-go. And they did.

14 The other outside influence is Marylon Boyd and her
15 campaign. She called it Campaign for Justice for Cammerin
16 Boyd. We have to keep this in perspective now. This is a
17 person who is an attorney, who actually does these types of
18 cases for a living. Whose son was involved in the incident.
19 And she goes out of her way to have contact with the percipient
20 witnesses that would be testifying in this case. She goes out
21 of her way to talk to them about what happened. She goes to
22 the candlelight vigils with them. She even talks about having
23 Mario Rogers and Otis Harris in her campaign, two witnesses to
24 this event. What does that mean in terms of their perspective
25 when they come here to testify?

1 In addition, talked about -- I think it was with Miss
2 Cranshaw, I believe, that Miss Cranshaw was at one of these
3 rallies, and Ms. Boyd went out of her way and introduced Miss
4 Cranshaw to Cammerin Boyd's two beautiful young daughters. How
5 can that not have an effect on anybody? I'm sure it had an
6 effect on you, when you met them. These two delightful girls.
7 They're absolutely charming. And to see them and then be a
8 witness as to what happened with their father, how can that not
9 affect you and make you perhaps want to help them out? That's
10 the influences that Ms. Boyd potentially brought to bear on the
11 witnesses in this case.

12 And let's not forget what she did with Mr. Campos. As
13 a result of her activity, she had him so terrified and his
14 mother so terrified that she wouldn't let him testify in this
15 case despite repeated court orders.

16 MR. GALIPO: Your Honor, I'm going to object as
17 mischaracterizing the testimony in this case.

18 THE COURT: All right. Again, ladies and gentlemen,
19 there was testimony on this subject, and you will be the final
20 determiners of reasonable inferences that can be drawn from
21 Mr. Campos's testimony. I'll overrule.

22 MR. LOEBS: The other factor that I want to discuss
23 that relates to the perspective of the Larch Way witnesses is
24 they knew each other well and they talked about it a lot. And
25 of course they did this right after this happened.

1 Understandably. And they had very little information about
2 what had occurred. And they're probably all trying to make
3 sense of it, perhaps. Many of them maybe had bad contacts with
4 the police before, didn't have the most positive view of the
5 police, and that may have influenced them as well. And let me
6 just give you one example of that, and, again, I'm not
7 necessarily saying that the people on Larch Way are horrible or
8 bad -- anything like that. It has to do with their
9 perspective.

10 Some of the witnesses testified that when they heard
11 the gunshots being fired, they went to their windows and came
12 out wanting to see what's happening, and they heard the police
13 ordering them to get back inside. The police officers said,
14 Yeah, we did that because shots were being fired, this is
15 extremely dangerous, we don't want anyone to get hurt. We
16 don't want anyone to get -- you know, we see people, we tell
17 them to get out of the way. Officer Paine, that's the first
18 thing he did when he got to the scene. He saw some people
19 huddled, he said, Get out of here, get out of here, because
20 that's what a police officer's role is, is to help protect the
21 public, to protect the people on Larch Way from what was
22 happening on their street.

23 But many of the witnesses, if you'll remember, their
24 perspective was that they wanted to see what was happening,
25 that they thought that the police telling them to go away was

1 because they didn't want them to see. That gives you an idea
2 of the different perspective that people that testified on
3 Larch Way have when it comes to viewing police officer
4 activity.

5 Now, let's talk about the first witness. And I won't
6 go through in the order in which every witness testified, but I
7 will do that when we talk about the Larch Way witnesses. Just
8 for simplicity. And also because it's been a while since we
9 heard these witnesses testify. And so I wanted to discuss the
10 way in which their testimony came up.

11 And, again, using this ledger, Did the plaintiffs
12 prove that Cammerin Boyd was not moving his hands into the SUV
13 when Officer Paine fired? That's the critical issue. Let's
14 talk about the first witness that the plaintiffs brought to
15 discuss that critical fact. That's Mr. Harris. You notice I
16 have a question mark by his name because we're going to talk
17 about whether he and his testimony actually helped prove this
18 proposition with the plaintiffs actually having the burden.

19 Mr. Harris. Remember his story. He told you that he
20 lived, this says 652, but that's wrong.

21 MR. GALIPO: 672.

22 MR. LOEBS: Yeah, he lived at 672. He lived at 672,
23 which on this exhibit is right here (indicating). Just so we
24 can get some idea. And then he first told you he was taking
25 his garbage out somewhere around here when he first saw the

1 activity on Larch. Somewhere around this location. And that's
2 next to 652. So when I indicate here that he was at 652, I
3 don't mean that to mean that's where he lived, but that's where
4 he was when he told you he first saw the events that transpired
5 on Larch.

6 According to Mr. Harris, Mr. Boyd had his hands raised
7 the entire time. Never once moved them. Mr. Harris told you
8 he saw the entire incident from beginning to end, never saw him
9 take his shirt off, never saw him lower his hand to his belt,
10 never saw him use his hands in an attempt to get down, never
11 saw him move his hands in any way toward any part of the car.
12 He's the only one that says that.

13 Next, he says that Mr. Boyd never walked to the back
14 of the SUV. And he says again Mr. Boyd never, ever lowered his
15 hands. And that when this was happening, he was facing the
16 officer who fired the lethal shots. That's Mr. Harris's
17 testimony.

18 Now, I want to discuss Mr. Harris's bias as it relates
19 to your hearing his testimony in this case. And this is a bias
20 against -- as it relates to the San Francisco Police
21 Department.

22 As you heard, Mr. Harris has had 150 felony arrests in
23 San Francisco. 150. And 75 misdemeanor arrests. That's a lot
24 of negative contact with the San Francisco Police Department.
25 That's an enormous amount of negative contact with the

1 San Francisco Police Department. Mr. Galipo in his remarks
2 attempts to pass this off as a '60s thing? I don't know where
3 he got that. Completely made-up fact. You remember
4 Mr. Harris, he was in prison, in state prison, until 1996. A
5 '60s thing? The Haight-Ashbury era that you have 150 felony
6 arrests? Was that the summer of? That's completely made up.

7 Mr. Harris admitted on examination that he had been
8 shot at by the San Francisco Police Department. He also told
9 you that he went to jail for eight years, in his mind doing
10 nothing. This all relates to how much can you rely on what
11 Mr. Harris tells you. Does he have a bias? And Mr. Harris
12 admits proudly that he is part of the Campaign for Justice for
13 Cammerin Boyd. That he will yell out as loud as he can for
14 anyone to hear what he believes about this case. That he goes
15 to meetings, he goes to hearings. He's part of the campaign.

16 And remember he also said that he helped put cameras
17 on Larch Way; not to protect against the crime that's happening
18 there, which he said is frequent and violent, but to watch the
19 police.

20 So when you're listening to his testimony, he comes to
21 you with this bias, you have to evaluate what he says on that
22 basis.

23 Next I want to talk about his credibility, which is a
24 little bit different from bias. Bias could just be, you know,
25 what you have, what you bring to bear before you say anything

1 about the case. Someone could have a bias, but they could
2 still, despite that bias, they could tell the truth and you
3 could perhaps believe it. I would have expected them to maybe
4 shade things one way, but they were credible to me.

5 So the next issue I want to talk about is his
6 credibility with respect to what he told you. And I submit
7 that he was not credible in the least. You see I use the word
8 "lie." It's a strong word. I hesitate to use it in describing
9 any witness's testimony. People sometimes have a strong
10 reaction against using that word. And I've been told, Don't
11 tell the jury that someone is lying. Say they misrepresented.
12 But there's really no other way to describe what Mr. Harris
13 did.

14 And this is the big one. Remember when I showed you
15 the map here about where Mr. Harris said he initially was?
16 Right by Mr. Rogers at around 652, right in this location?
17 Which, as you can see, is a long hall, you know, a lot to look
18 through to see what's happening at the SUV. He told you that
19 he moved after the first shots were fired, that he moved from
20 that location and went all the way down the sidewalk, all the
21 way to 620. 620. Right here (indicating). According to
22 Mr. Harris's testimony, he was standing shoulder to shoulder
23 essentially with Officer O'Malley. Right in the thick of it.
24 And he said, Well, I wasn't really taking a risk because I
25 thought the shots have been fired, things are calming down, and

1 he said that children are coming back in to play, I had visions
2 of birds starting to chipper.

3 That is a complete lie. And how do we know that?
4 Because his friend, Mr. Rogers, testified, you know, no, he
5 wasn't down there, he was right with me the entire time.
6 Mr. Rogers who lives at 652, lives right here, said he was
7 there talking to his friend Otis Harris, and he was there the
8 entire time, he was there when the shots were fired. Which
9 really doesn't that make the most sense, anyway?

10 But Mr. Harris, because he wants to be involved in
11 this, he has this idea that he's the protector of Larch Way,
12 the protector of Larch Way against the police. If he's up
13 here, he's not going to be much of a witness, so he's got to
14 put himself right in the thick of it, even though it's
15 ridiculous in the few seconds between the first series of shots
16 and the last that he's going to be running into the thick of
17 it. Probably into the line of fire with police offices.

18 So we know where Mr. Harris -- from Mr. Rogers that
19 Mr. Harris lied to us about where he was. So what else did he
20 lie about? Again, it's a strong word, and I recognize that.

21 If you remember, he described a situation where
22 because he was a witness to the incident in Larch Way, that
23 police officers came to him, beat him half to death, planted
24 drugs on him and then went into his house and stole all this
25 videotape that he had that showed the police doing outrageous

1 things on Larch, having their guns pointed at the citizens,
2 slapping high fives, kicking Cammerin Boyd's legs, he caught it
3 all on tape, and he says because the police officers knew about
4 it, they came to his house and they beat him nearly to death.

5 I asked him about it. I said, Did you file a lawsuit
6 as a result of that? Seems like something like that happens
7 you might want to complain to someone about it. Did you file a
8 lawsuit? He said, No, I didn't file a lawsuit. You didn't sue
9 Officer Nelson? No, I didn't. Turns out that's an absolute
10 lie. We have in evidence the lawsuit that he filed signed in
11 his own hand that's in evidence in his own hand. You'll see
12 what's in there. It doesn't say anything about videotapes
13 stolen from his house what happened at Larch Way, but it is a
14 lawsuit that he filed out of that incident that he lied about.

15 Why would he do that? Well, it's a lawsuit against
16 the San Francisco Police Department. Similar defendant in this
17 case. It's a lawsuit against the San Francisco Police
18 Department. He knew that if you knew he's filing a lawsuit
19 against the department same time he's testifying regarding use
20 of force, you might think he has a bias.

21 He also lied, quite remarkably, about his history of
22 arrests. He told you through his deposition that he had not
23 been arrested after 1980. He'd actually spent time in prison
24 well after 1980.

25 This was a big one. When he was testifying, he told

1 you through Mr. Galipo's testimony, that he, with his good
2 vantage point at 620, could see the inside of this door and he
3 could tell for sure there was no gun there. And that no one
4 even said there was a gun for like 30 minutes after the
5 incident happened. And then they found the gun at some other
6 location. He said, I could see it. There was no gun there.

7 If you recall in his deposition testimony that I read
8 back to him, he said exactly the opposite. That from where he
9 was he couldn't tell one way or the whether there was a gun in
10 the pocket of the door.

11 That's not just a simple misunderstanding or faded
12 recollection. Even though I hesitate to use the word, that is
13 a lie. It's not just a lie about these other issues, it's
14 similar to the first lie. It's a lie to you about what
15 happened.

16 He also said that the officers never, ever gave first
17 aid to Mr. Boyd. We know that's not true. He said no one gave
18 first aid to Mr. Boyd after the shots were fired. You heard
19 the testimony from the captain with the emergency services that
20 testified about the first aid that was provided within minutes
21 after the shooting. You heard testimony from Officer Mason
22 about the first aid that was provided. And Officer Jonas as
23 well.

24 But equally important is that Mr. Harris's description
25 of the events is grossly inconsistent with the physical

1 evidence. Remember what he's saying. He's saying that Officer
2 Paine is standing directly across from him, and that when the
3 shots were fired he had his hands up, and he did not move, and
4 he was facing directly across from him. Well, we know what the
5 wound paths are. And they're completely inconsistent with
6 that.

7 I was going to use the larger diagram with the nature
8 of the injuries and the anatomical position, but I'll just use
9 the corner of this. I couldn't put my hands on it.

10 You'll see in this representation that Mr. Jason did
11 that, if you recall -- actually I'm going to try to find it.
12 It's important enough.

13 (Pause)

14 This is marked for identification as Exhibit V-8. If
15 you recall, Mr. Jason prepared this representation of the wound
16 trajectories to Mr. Boyd standing in an anatomical position.
17 And you'll also recall Dr. Smith in his testimony reviewed
18 Exhibit V-8, and he said that is a fair representation of his
19 opinions as to the trajectories in Mr. Boyd's body as well. So
20 this is what we're talking about in terms of the wound paths.

21 This would be -- this is the shot to the abdomen, of
22 course. This is the leg, and that's the hand. There's no way
23 someone standing like this when the shots were fired that
24 they're going to sustain any, any of those injuries. Because
25 according to Harris, he was facing directly at Officer Paine,

1 had his hands up when the shots were fired. That doesn't fit
2 with any of the injuries that Mr. Boyd sustained.

3 So as to Mr. Harris's credibility, I have a bit more
4 with him, and the reason for that is because he was the
5 plaintiffs' first witness. They said, This is the guy we want
6 you to believe. This tells the story about how it happened.
7 When Mr. Galipo at the end of his presentation was talking
8 about how Officer Paine probably didn't -- never even thought
9 that Mr. Boyd is going for a gun because he didn't look for one
10 afterward so it's probably never even in Officer Paine's mind,
11 what that means is, if that's true, then Officer Paine executed
12 an individual who was just trying to surrender and had no
13 qualms about it. That's what Mr. Galipo is suggesting.

14 And what witness testified most closely with that that
15 the plaintiffs would ask you to believe? That's Mr. Harris.
16 That's why I'm spending as much time as I am on this testimony.
17 And also because it happened a long time ago, and I want it to
18 be fresh in your minds as to whether he's a credible witness as
19 to anything or not.

20 But there are a few other things I want to remind you
21 of as well. Do you remember some of the crazy stories that he
22 told you about what happened? For example, his testimony was
23 that when he sees shots were fired, he described it as a
24 Gestapo-like military operation. His testimony was that just
25 before Officer Paine fired, all of the surrounding officers,

1 just before the shots were fired, turned their guns on the
2 residents of Larch, away from Mr. Boyd, turned their guns on
3 the residents of Larch as if ordering them back into the house
4 so they couldn't see what was happening. Like it was done like
5 clockwork.

6 He even said one of the officers had a gun pointed at
7 his wife. And, interestingly enough, when Mr. Harris was
8 describing these activities -- again, he's claiming that he is
9 somewhere that he wasn't -- he said he was right here, he's
10 describing officers all over pointing the guns at individuals,
11 and he says he saw that seconds before the shots were fired.
12 Not only couldn't he do that, but how ridiculous is that? But
13 that was his testimony. That was plaintiffs' lead witness.
14 They said, Believe this guy. He proves our case.

15 Talked about the videotapes being stolen by the SFPD.
16 If there were videotapes showing individuals with their guns
17 drawn pointing them at the residents of Larch, officers
18 slapping five, anything like that, don't you think you'd have
19 that? Wouldn't he have that? Doesn't have anything like that.
20 It's just made up.

21 How about the description of the Bay View officers'
22 behavior. Remember this was awhile ago he was testifying. But
23 he said after the shots were fired, they left uncovered the
24 upper part of Cammerin Boyd's body for a half hour or so while
25 officers from the Bay View came down and taunted Mr. Boyd on

1 the ground. They were laughing, they were saying, Good shot,
2 wish I could have been here, that's one for us. Officer
3 Espinoza, who'd been murdered a few months before, would be
4 proud.

5 It's absolutely ridiculous. And that's the witness
6 they want you to believe. Talked about the officers not only
7 giving high fives, rejoicing at what had happened, but then
8 they started kicking Cammerin Boyd's legs. I ask you, How
9 credible is that?

10 But despite Mr. Harris having no credibility, there
11 are a few things he said that were of some significance, and
12 I'm not necessarily believing anything he said because nothing
13 he said was credible, but there were a few things that came out
14 of his testimony that were really damaging to the plaintiffs'
15 case. Remember when he was testifying I asked him
16 specifically, Are you saying the hands were up, he never moved
17 in any way before the shots were fired? He said, That's right.
18 He didn't duck, he didn't wobble, he didn't move at all,
19 standing still, hands up, and the shots were fired? He said,
20 Absolutely, that's right.

21 Well, that's not what he told the OCC when he was
22 interviewed months before. In fact, he told them, and I read
23 this to you impeaching his testimony, that just before the
24 shots were fired he saw Cammerin Boyd duck or wobble and move.

25 MR. GALIPO: I apologize, but I'm going to object as

1 mischaracterizing the evidence in this case.

2 THE COURT: I'm going to overrule, as I have been, and
3 I would also point out that in each instance that counsel who
4 is making the objection will have an opportunity to address
5 this in their own argument. So I will overrule.

6 MR. LOEB: If this is important to you and there's a
7 concern I've misrepresented this, all you have to do is look
8 for this in the transcript and you will find it. When he was
9 interviewed by the OCC, he told them that just before the shots
10 were fired, he saw Cammerin Boyd duck and wobble, which is
11 contrary to what he told you when he was testifying in trial.

12 Also he says Cammerin Boyd was laughing just before
13 the shots, he was laughing, he was mocking the officers.
14 Again, I don't know if we can count on anything Mr. Harris said
15 as true, but isn't that an unusual description of this event if
16 Mr. Boyd was behaving as Mr. Harris has indicated?

17 The other thing he said, which I don't know if you put
18 any credibility in it or not, but from his description he's got
19 Cammerin Boyd standing there with his hands out, Officer Paine
20 coming up with his gun drawn, and then something happens, and
21 Officer Paine started backing up and yelling, "Down, down, down
22 down, down," or words to that effect. He's just standing there
23 with his hands up? Why would Officer Paine react that way?
24 Apparently spooked by something Cammerin Boyd did? I don't
25 know if maybe Otis Harris when he was back with Mario Rogers,

1 if Mario Rogers was even there, saw any portion of this and
2 just made up the rest? Maybe that's what he saw because he did
3 see Cammerin Boyd move into the vehicle, and he saw Officer
4 Paine fire as a result, and that's what would explain this
5 testimony. Perhaps.

6 The other thing that he said that was interesting, and
7 again I don't know if we can put any stock into it, is that
8 Cammerin Boyd, when he was pulling into the Larch Way, told
9 him, "The police are trying to kill me, the police are trying
10 to kill me." Well, if that happened, and I'm not suggesting
11 that it did, how would he know that? How would he know that
12 the police are going to kill him, unless he is going to take
13 action to make sure that that happens? He's been shooting at
14 the police attempting to kill them. He's coming to Larch Way.
15 Why wouldn't he just think, if I surrender, they'll take me
16 into custody as they've done many, many times before in my
17 life. Why would he think they're going to kill me, unless he
18 had in mind making them do exactly that? How else would he
19 know that?

20 So as to Mr. Harris, I did spend a long time on him,
21 and I won't be as lengthy with other witnesses, but as to
22 Mr. Harris, did he help plaintiffs prove this important
23 proposition, the proposition of the case, that Boyd was moving
24 his hands into the vehicle -- was Mr. Boyd moving his hands
25 into the vehicle when Officer Paine fired? Did he help prove

1 that that did not happen?

2 He didn't. He doesn't fit on the "yes" side of the
3 ledger. In fact, if anything, he established that they didn't.

4 The next witness I'd like to talk about is Mr. Rogers.
5 Now, in talking about Mr. Rogers and the other witnesses, I'm
6 going to go through sort of the same type of analysis as to
7 their testimony. Again, Mr. Rogers, he was at 652. He said
8 that Mr. Boyd has his hands raised some of the time, not all of
9 the time. Different than Mr. Harris. He told you that he did
10 see Mr. Boyd walk away from the door. And that he was facing
11 Officer Paine. And that different than Mr. Rogers, he said
12 that Mr. Boyd was in the door area and almost seated when he
13 was shot. But he had his hands still up. That was Mr. Rogers'
14 story. That's what he told you.

15 Now, like with Mr. Harris, I want to talk about
16 Mr. Rogers' bias that he brought into testifying in this case.
17 He himself also had many, many prior problems with the
18 San Francisco Police Department. Many arrests and convictions.
19 But interestingly with Mr. Rogers, he essentially admitted to a
20 bias through this, admittedly on his part, essentially racist
21 remark that all officers look alike. Even plainclothes
22 officers. I asked him about that before he knew I had that
23 statement; said if someone says that, what kind of statement is
24 that? That's a terrible thing to say. Turns out, those words
25 came out of his mouth. So not only do we have circumstantial

1 evidence of his bias, we actually have his own words.

2 Also, if you recall, Mr. Harris, according to
3 Ms. Boyd, is part of the Cammerin Boyd campaign. Although
4 Mr. Harris, if you recall, he denied it -- or Mr. Rogers, he
5 denied it.

6 Now, with respect to Mr. Rogers, also on his bias,
7 remember that he went to school with Lois and with David Boyd,
8 relatives of Cammerin and Marylon -- Ms. Boyd, excuse me.

9 So in terms of Mr. Rogers' bias, many convictions,
10 admitted bias, part of the campaign, and he knows relatives and
11 went to school with relatives of Mr. Boyd.

12 Now, let's talk about some of Mr. Rogers' credibility
13 issues. And, again, I'm going to suggest to you that he is not
14 credible.

15 Has a felony robbery conviction in 1997. Something
16 you're allowed to take into consideration in reviewing a
17 witness's credibility. You'll receive instructions on that.
18 He had the crazy story about Mr. Boyd whipping his shirt around
19 his head. I don't know whether that's true or not. He's the
20 only witness that testified to that. He also said that after
21 this happened, no one even came up to Mr. Boyd and checked for
22 a pulse to see if he was alive. No one gave him first aid. No
23 one checked for a pulse. And I asked him, If that would have
24 happened, were you at a vantage point where you could have seen
25 it? And he said, Yes. So he's saying not only he didn't see

1 it, So you're saying it did not happen? He said, Yes, that did
2 not happen. Imagine that, a shooting event that occurs and no
3 one goes up to even see if the individual's still alive. Well,
4 if for no other reason, wouldn't they do that for their own
5 safety to make sure there was no longer a threat? Wouldn't
6 they do that to see if they needed to give first aid, call an
7 ambulance? Of course they would. Of course they did.

8 That's not credible.

9 And as with Mr. Harris, Mr. Rogers' description of how
10 the event happened is grossly inconsistent with the physical
11 evidence of the injuries to Mr. Boyd. Again, looking at V-8,
12 there's no way that an individual could be seated with their
13 hands up facing the individual, and that's what Mr. Rogers'
14 testimony was, that he was facing the individual, shoulders
15 facing him, when the shots were fired, even had him do a
16 diagram where he showed exactly the way in which he was
17 oriented. Seated, going to sit with his hands up, there's no
18 way that individual can receive these wounds. That was
19 Exhibit V-8.

20 So one last thing, it's interesting that he and his
21 friend, Mr. Harris, have the same crazy story about the high
22 fives happening after the shooting occurred. I have a lot more
23 to say about that as it relates to other witnesses,
24 particularly Miss Wilson, as to how that story came to be.

25 So now the question is, with Mr. Rogers, what did he

1 really see? Because there's another issue that was presented
2 through his testimony. He was pretty far away. In other
3 words, I showed you -- this is a -- this is not a -- this is a
4 copy of a blowup that's in evidence. And I took some pushpins
5 to generally represent where the witnesses were in this case.
6 I'll have a closer version of this when you get to Larch Way.
7 Because this is generally Mr. Rogers and Mr. Harris. They're
8 represented by these two dots here. This is, of course, the
9 area where everything happened. I'll talk about who these
10 witnesses are in a bit. This would be Officer Stearns, Officer
11 Elieff, Officer O'Malley, Officer Paine, this would be Joe
12 Campos. This would be Officer Warnke. And this is
13 Ms. Jackson. I believe this is Miss Wilson here and Mr. Ingram
14 up here (indicating).

15 But the point of this and the reason why it's on this
16 big diagram and hard to see is because Mr. Rogers and
17 Mr. Harris are way down here. They don't even make the
18 close-up diagram. They're off the chart. So you have to ask,
19 what did he really see about what was happening from way back
20 here? Which is where he admitted he was, the entire time. At
21 least till the last shots were fired.

22 But that gets to the next issue, and that is -- now
23 I'll get to that in a moment. But remember his story that he
24 told about when he saw Mr. Boyd first get out of the vehicle?
25 He described something that no one else did, that Mr. Boyd

1 first got out of the vehicle, he then reached with both of his
2 hands into the vehicle as if he was trying to get someone out
3 of the vehicle. Well, if that would have happened, he would
4 have been shot then. Perhaps if Mr. Rogers did see some of the
5 event, maybe in his mind he has the order confused and he's
6 really describing what happened at the end.

7 But to say that Mr. Boyd got out of his car and then
8 reached into the vehicle with both hands as if to grab someone
9 and pull them out, you know, wouldn't you think the officers
10 would be looking for something like that? And isn't that a lot
11 like what Officer Paine, Officer O'Malley, Officer Elieff,
12 Officer Stearns, Fatima Wilson and Joe Campos, isn't that a lot
13 like what they described happened when the last shots were
14 fired?

15 But there's a question as to what he observed.

16 Also significant is he was asked this question, and it
17 was by Mr. Galipo: Did he reach inside just before he was
18 shot? And his answer wasn't no. No, not at all. I have a
19 clear view. He didn't. His answer was, Not that I recall.
20 That's a little bit weaker than saying, I have -- I absolutely
21 know for sure that didn't happen. Not that I recall.

22 This is also an interesting thing with Mr. Rogers. If
23 you recall, he says that when he was first observed, heard what
24 was happening, he was upstairs, he was playing cards with Dana.
25 And he heard the shots and he went to the window and he ducked

1 for awhile waiting till the shots were done. Then he looked
2 out to see what was happening. And then if you recall,
3 Mr. Rogers, he's a somewhat older gentleman didn't move around
4 very well when he was testifying. But according to him, after
5 the first series of shots, he then went down -- went through
6 three rooms, down two flights of stairs, got outside, between
7 the first series of shots and the second, and was able to
8 observe everything that happened. You can't do it in that
9 amount of time. Even if you're running.

10 So the question is, what did he really observe? Is it
11 possible that what happened, he's heard the shots, he came
12 outside, he's standing there with his friend, by 652 right here
13 with his friend Mr. Harris, they're part of an exciting event,
14 they're talking about what happened, they see very little, but
15 they want to become involved, and then they come up with their
16 versions of events, that don't match each other or anyone else,
17 or the physical evidence?

18 So there's a real question as to what he observed, if
19 anything, aside from just credibility.

20 And another thing that he did admit that while this is
21 happening, he's not all looking at Mr. Boyd. He's standing
22 there talking with his friend, Mr. Harris.

23 So in evaluating Mr. Rogers' testimony, similar to
24 Mr. Harris, despite his strong bias against SFPD and his lack
25 of credibility, there are some things he says give you pause as

1 to whether what he saw and whether maybe he did see part of
2 this event as described by the police officers, Mr. Campos and
3 Miss Wilson.

4 And that is he saw Boyd reaching into the car, but he
5 described it at a different time. And also, as I said, he lost
6 sight of both his hands, and the officers were yelling at him
7 to get down on the ground while he was reaching into the car.
8 He admits that Mr. Boyd was not complying with the officers'
9 orders.

10 So Mr. Rogers. Given all that he discussed. His
11 bias, his lack of credibility. His inability to perceive
12 anything that happened in this event, how far away he was, does
13 he help plaintiffs prove Boyd was not moving his hands into the
14 SUV when Officer Paine fired? I submit to you that he also
15 does not, and he goes on the "no" side of the ledger.
16 Plaintiffs have yet to bring any credible evidence to support
17 this important proposition.

18 The next witness that I'd like to talk about is
19 Michelle Cranshaw. Going through the same analysis. Does she
20 support plaintiffs' proposition? Where does she live? 625.
21 Now --

22 THE COURT: While you're getting that board together,
23 I'm just looking at the clock. Now, it's 11:30. We started at
24 approximately a quarter to, it was probably closer to 10 to
25 10:00 before you actually got started. Can you just give me

1 some estimate while we're between witnesses, essentially, here,
2 when would be a good place to break? At a quarter to the
3 reporter will have been reporting for about two hours.

4 And, again, I just might mention, ladies and
5 gentlemen, I might have said this in connection with the
6 opening statements, I don't recall, it takes a greater toll on
7 the reporter to write down these kinds of statements because
8 there's no break while a witness looks at something or just in
9 between the question and answer, just keeps going. So I don't
10 think we could exceed another 15 minutes before we would need
11 to take a break.

12 MR. LOEBS: We could take a break now. I don't know
13 if I would finish my discussion of Miss Cranshaw within 15
14 minutes.

15 THE COURT: What would you expect might be the total
16 amount of time remaining on this argument? Just an estimate.

17 MR. LOEBS: The total time for my closing remarks?

18 THE COURT: Well, to go, you know. Which is how much
19 more are we talking about, another hour or --

20 MR. LOEBS: Probably more than that.

21 THE COURT: More than an hour. Okay.

22 MR. LOEBS: That's my idea.

23 THE COURT: I think there's a good chance we won't be
24 able to complete your argument in the morning session.

25 MR. LOEBS: I think that's true.

1 THE COURT: We actually could have started at 9:30,
2 but I didn't want to keep you waiting, and then we were unable
3 to start because everybody else wasn't here at 9:30. That
4 might have made a little bit of difference.

5 Okay, let's take the break now this is an appropriate
6 place. 15 minutes, ladies and gentlemen. Please remember my
7 admonition.

8 (The jury exited the courtroom)

9 (In open court; jury not present)

10 THE COURT: I want to just make one comment: There
11 was some evidentiary matter that counsel wanted the Court to
12 deal with, and apparently it isn't affecting the closing
13 arguments at the moment. Do you anticipate it may affect the
14 rebuttal argument or --

15 MR. GALIPO: Possibly not. What it is, your Honor,
16 there were some photographs of Mr. Boyd with his family that
17 were part of Exhibit 1 and 2, and I'm going to work today with
18 Mr. Wiener to make sure we resolve that.

19 THE COURT: All right.

20 MR. GALIPO: That's the only issue, and I don't think
21 we're going to need to take up the Court's time because
22 Mr. Wiener told me he had an objection to a few, and I think
23 I'm okay with his objection.

24 THE COURT: I'll leave that to you, if you're able to
25 resolve it, fine. And at some point we'll put the ruling on

1 regarding the instructions.

2 All right, thank you.

3 MR. GALIPO: Thank you.

4 (Morning recess)

5 (In open court; jury not present)

6 DEPUTY CLERK: Please come to order.

7 MR. GALIPO: Does the Court have an idea what time
8 we'll go to?

9 THE COURT: This afternoon or now?

10 MR. GALIPO: Over the next hour or so. For lunch.

11 THE COURT: Maybe 30, 40 minutes now, and then break
12 for lunch, come back. You know we started at an awkward time,
13 so it doesn't fit exactly, but we needed to take some break
14 this morning.

15 (The jury entered the courtroom)

16 THE COURT: Okay, thank you, ladies and gentlemen.

17 Back to Mr. Loeb.

18 MR. LOEB: Before I start again the presentation, you
19 probably have some sense the manner of which I'll go through
20 the evidence, and you have some sense of how many more
21 witnesses we have to talk about. And I want to let you know
22 that I will go through these witnesses more quickly than I have
23 now that we've discussed the general outline that I've been
24 talking about, without belaboring each small point. So I do
25 not intend this to be a six-hour closing or even close to that.

1 One fact that, for whatever reason, I forgot to
2 mention related to the plaintiffs' theory that the gun was
3 planted. There was no gun in the car. Mr. Boyd didn't have a
4 gun, wasn't shooting at anyone. The testimony of Miss Natasha
5 Gatto, if you remember her, she was the woman that was with her
6 friend, either -- I can't remember if they were going to or
7 coming back from a rock climbing trip, and they were just
8 standing outside in the street when the first shot was fired
9 and saw the SUV -- she saw the SUV going right past her. And
10 not only did she describe seeing an individual take his hand
11 and put it out of the car and shoot, but she actually was able
12 to pick Mr. Boyd out of a line-up, top middle, and identify him
13 as the individual that did that.

14 In order for their conspiracy theory to ring true, not
15 only do all those witnesses I talked about have to be lying,
16 but Miss Gatto has to be lying as well. Not just mistaken. Or
17 maybe their suggestion is there was another SUV driving on May
18 5th, 2004, another black SUV with an individual firing a gun at
19 about 8:00 p.m. in the same location, and she just confused one
20 for the other, and the individual looked just like Cammerin
21 Boyd.

22 I was going to talk about Miss Cranshaw next. Now
23 that we're not talking about Mr. Rogers and Mr. Harris, we get
24 onto the smaller board. This is an exhibit. The other version
25 is in evidence. It's the same exhibit I just added for

1 purposes of closing argument some markers that generally depict
2 the locations where witnesses said they were at the time shots
3 were fired. Now I'm talking about Miss Cranshaw. She's over
4 here (indicating), and she is living at 625. And you know 625
5 is right here. I don't, you know, know which window she's in,
6 this one or this one, so I just put her in this location
7 (indicating). I'm don't know if I identified the exact window,
8 but rather her address, but for purposes of this discussion
9 we're talking about Miss Cranshaw and what she could see and
10 what she testified to.

11 And you'll notice, as I'm showing you this exhibit now
12 for the first time, we have Mr. Ingram at 648. Mr. Rogers and
13 Mr. Harris wouldn't even make this diagram, they're over to my
14 left, so they don't show up here. And then this would be
15 Miss Wilson, Fatima Wilson, she would be around here. Over
16 here we have Joe Campos, 618. Covered up by this, but 618,
17 with obviously the best view of what happened. Ms. Jackson
18 over here around, I think, 612 or 610. I think it's 610, where
19 she was living.

20 And then other officers, Officer Stearns, Officer
21 Elieff, taking cover behind this vehicle. And then you have
22 Officer O'Malley taking cover, this is again when the final
23 shots were fired, behind the red SUV. Officer Paine discussed
24 his location here. And this is Officer Warnke where he said he
25 was in relation to the SUV when the shots were fired.

1 So that's what this is designed to just generally
2 approximate so you can get an idea of where everyone was in
3 relation to other things. Again, with no intent to be exactly
4 precise as to the described locations.

5 We're talking now about Miss Cranshaw and where she is
6 in relation to the SUV, and she was at 625. What she said
7 happened, according to her point of view, that she saw Mr. Boyd
8 standing outside of the SUV, and when his left hand dropped to
9 his side, that's when the shots were fired. That was her
10 testimony. And the right hand was up. That's what she said.
11 She said that he was standing facing the officer who fired.

12 And then I want to discuss -- that's her version --
13 discuss her issues as to bias. Now, like the other witnesses
14 we just discussed, she also has had arrests by San Francisco
15 police officers. Which, of course, can lead to bias against
16 them. In fact, she also had expressed bias against the
17 San Francisco Police Department. And this had to do with her
18 thoughts and impressions before this incident happened. She
19 told you that she thought a whole lot of police officers in
20 Northern Station should be fired. That's the bias that she
21 came in with in viewing this incident.

22 She's also one of the individuals I talked about who
23 was influenced by Ms. Boyd. Miss Cranshaw, I'm not saying
24 sought out that influence, but who could avoid it. She was
25 introduced to the little girls at the candlelight vigil

1 mourning the loss of their father, that's going to have a
2 powerful impact on anyone in reviewing the evidence and what
3 they saw.

4 Next, before she ever gave any statement, her first
5 statement to anyone, she didn't talk to Homicide or OCC or
6 anyone else, even though she knew they were interested in
7 getting her testimony. The first time she talked to anyone
8 about what she saw was in January of this year. And that was
9 after many, many meetings with plaintiffs, plaintiffs'
10 attorneys, the plaintiffs' investigators, and then isn't it
11 somewhat interesting that in January 2007, after perhaps the
12 plaintiffs have learned that the left hand can't be up like
13 this (indicating), the other witnesses have said, can't be,
14 because of the fiber evidence, it has to be lower, well, here's
15 a witness that says okay, the left hand was lowering. We'll
16 talk about whether even that's consistent with physical
17 evidence in a moment.

18 And also remember she's Miss Wilson's cousin.

19 Next I want to talk about the credibility of Miss
20 Cranshaw. She admitted to you that in 2007, she had a
21 conviction for fraud. That's something you can take into
22 account in evaluating whether this witness when they're giving
23 an oath to tell the truth, whether that's something that they
24 would keep in mind when giving their testimony. Felony
25 conviction for fraud. "Fraud" means lying about stuff.

1 The next thing that she said that I would suggest
2 suggests that she's not very credible is that she testified
3 that just before the shots were fired by Officer Paine, she
4 didn't know him by name, but the officer who fired the shots,
5 she said she could tell, and this is a quote, that he had a
6 trigger-happy look in his eyes. A trigger-happy look. And
7 it's not something according to her that she just sort of
8 reconstructed afterwards. According to her, she saw this and
9 exclaimed to her sister, Look, that officer has a trigger-happy
10 look in his eyes, he's going to shoot one, before this
11 happened. You have to ask yourself, how likely is it that
12 someone witnessing this event is going to have that perception?
13 How credible is that? And that she exclaimed that to her
14 sister before the shots were fired.

15 In addition, talked about the crazy story about the
16 high fives and the officers celebrating after the shots were
17 fired. This is unquestionably an incredibly tense, traumatic
18 event for everyone that's involved. To suggest that these
19 officers were slapping five and celebrating after the shots
20 were fired is absurd. And with Miss Cranshaw, she adds to the
21 story that's been building throughout the neighborhood. Now
22 she says there were five to six officers involved, slapping
23 five, and rejoicing after these shots were fired. That's not
24 credible.

25 And again, her story, even though she has the hand

1 dropping a little bit, is grossly inconsistent with the
2 physical evidence. That doesn't match any of the trajectories,
3 hand dropping like this (indicating) doesn't match. That
4 doesn't explain the abdominal wound. It doesn't explain the
5 injury to the leg. Doesn't explain the injury to the hand.
6 It's not even close. And no one testified that it was.

7 Dr. Bonnell didn't. Mr. Jason didn't. Dr. Smith didn't. It
8 simply doesn't work and doesn't make sense. And didn't happen.

9 And her story, of course, is grossly inconsistent with
10 Mr. Harris, hands up all the time. Mr. Rogers, hands up and
11 seated. And wasn't it interesting when she was testifying that
12 she was absolutely adamant that she wanted to say she could
13 tell in her mind, saw that hand dropping to the left, that she
14 could tell he wasn't reaching for anything, he was just trying
15 to brace himself. Now, why would she be so adamant about using
16 the word "bracing" instead of reaching?

17 And isn't it curious that when we talk about Fatima
18 Wilson's testimony, you'll hear the same thing. That she was
19 going to do anything she could to not say the word "reaching."
20 And when we talk about Fatima Wilson's testimony, it's
21 interesting that her desire to change from the word "reaching"
22 in her prior statements to "bracing" came about after she had
23 multiple contacts with plaintiffs' attorneys and multiple
24 contacts with their investigator.

25 MR. GALIPO: I'll object as mischaracterizing the

1 evidence regarding multiple contacts and meetings with
2 plaintiffs' attorneys.

3 THE COURT: Again, ladies and gentlemen, I'll leave
4 you to your own recollection in that regard. Overruled.

5 MR. LOEBS: So as to Miss Cranshaw, what did she
6 really observe? As I indicated, on this exhibit, she's right
7 here. She's on the other side of the SUV. She has to look
8 through it. If she's standing in the wing of the door, she has
9 to look through it to see anything that's happening in that
10 location.

11 Also, point out, despite lack of credibility and bias
12 against the police, she did say he was moving his left hand,
13 which we don't think that her description of how he was when he
14 was moving his left hand is consistent with the physical
15 evidence, but if you'll recall Mr. Cameron's testimony about
16 what threat level the officers were facing from an individual
17 who had fired at police officers now to return to his car that
18 the officer would reasonably believe he had a loaded gun, put
19 yourselves in that officer's position, you have an individual
20 who's not going to the ground, who's not keeping his arms
21 raised, takes his t-shirt off, has reached to his belt and now
22 reaching his left hand towards the inside of the car. Would
23 that be an imminent threat of serious injury or death to those
24 officers? I suggest that it would.

25 She also indicated, although she wanted to use the

1 word "bracing" instead of "reaching", she couldn't tell when
2 she saw movement of his left hand whether he was reaching for a
3 gun or reaching to brace himself; and, of course, it's from the
4 officer's perspective. How could they tell, how could they
5 know that, and is that a chance that they would take with their
6 very lives?

7 So with Miss Cranshaw, does she support the plaintiffs
8 on this point that they must prove? No, she doesn't.

9 Next witness I want to talk about is Miss Jackson.
10 Now, Miss Jackson, as I discussed before, she's here
11 (indicating). And again, I don't know exactly which window, we
12 don't know exactly which window she was in. But she lived in
13 610, so I put her to the closer window, give her the benefit of
14 the doubt. And she may have been, had an opportunity to
15 observe some of these events if she'd been looking in this
16 direction when the critical event occurred. And on her direct
17 testimony, she says she saw at the time the shots were fired,
18 she told you she saw him standing with his hands up when the
19 shots were fired. That's what she told you on her direct
20 testimony. Facing the officers, hands up, much like Mr. Harris
21 described.

22 Now I want to talk about her issues as to bias. She
23 knows David Boyd, a relative of Ms. Marylon Boyd and Cammerin.
24 She talked about Mr. Harris and Fatima Wilson and Michelle
25 Cranshaw about what they saw. She also attended the vigils on

1 her street.

2 Now I want to talk about the credibility issues with
3 respect to Miss Jackson's testimony. This is the big one, for
4 her. On cross-examination, she admitted that she was not
5 looking at Mr. Boyd or even his direction when the shots were
6 fired. She testified that she's concerned about her children,
7 which is understandable, over to her left in this area
8 (indicating). That's where her attention is focused. And it
9 was the sound of shots that caused her to look back over to the
10 SUV. So she didn't see what happened.

11 And she said her attention was drawn away, maybe 5, 10
12 seconds. 5 or 10 seconds is perhaps the entire time, maybe a
13 little bit more, that Officer Paine was even in position where
14 he was. She did not see what happened. And it's interesting
15 that that's not what she told you on her direct testimony.
16 That came about through cross-examination, because I talked to
17 her before her deposition and that's what she told me. So she
18 had to admit what she told you previously, that she saw him
19 with his hands up when he was shot, and she didn't see that at
20 all.

21 And, again, her story, much like Mr. Harris's, does
22 not match the physical evidence of the wound path.

23 Another thing she said is no one ever searched the
24 car. We know that's not true. You heard several police
25 officers say that after this happened, the first thing they did

1 was check the car. They cleared the car. Officer Warnke
2 testified to that. Officer Jonas testified to that. But Miss
3 Jackson said no one ever searched the car.

4 So the question is, what did she really observe? She
5 had similar testimony about going up and down the stairs, as
6 Mr. Rogers did. Didn't seem to make sense. She even talked at
7 one point how she was concerned for her children; she heard the
8 shots, went down the stairs and then locked the door, which I
9 guess would be locking her children outside, and then came back
10 up to observe what happened. I don't know if that happened or
11 not. But that's awfully bizarre if it did.

12 And, of course, she testified that she was not looking
13 at Mr. Boyd when the shots were fired. So really what
14 relevance does her testimony have in this case. And she's the
15 one if you recall that said she heard Mr. Boyd say, "I'm
16 paralyzed, I'm paralyzed." Of course, he didn't say that. Of
17 course, he's not paralyzed. Did she just mishear and think it
18 was something else? She also said she heard this from when he
19 was inside the car, that no one else says. For whatever
20 reason, she's trying to help the plaintiffs in this case, and
21 she didn't get her story right.

22 So Miss Jackson. What does she say? Despite her lack
23 of credibility, she does admit she heard officers yelling at
24 Mr. Boyd to get down on the ground. Which seems to be
25 undisputed that the officers were yelling at the top of their

1 voices for him to do that.

2 But this was really important. Because remember
3 Miss Wilson, remember they had different names for each other.
4 Miss Jackson went by the nickname of "Tootsie". And
5 Miss Wilson went by the nickname of "Woo Woo" or "Wo-Wo", but
6 when I asked Miss Jackson in her testimony, Did you ever tell
7 anyone that at the time the shots were fired that you saw
8 Mr. Boyd reaching into the car? She said, No. I said, Did you
9 tell Fatima Wilson that that happened? She said, No. And I
10 think I used her nickname to remind her of who Fatima Wilson
11 was, and she said, I know who that is. Did you ever tell her
12 that you saw Mr. Boyd reaching into the car just before he was
13 shot? She said, No.

14 But then we heard the testimony from Fatima Wilson,
15 the witness that plaintiffs did not call, and she told you
16 through her deposition testimony that, yes, she had a
17 conversation with Miss Jackson, and Miss Jackson did tell her
18 that she saw what Miss Wilson saw; and that is, that at the
19 time the shots were fired, Mr. Boyd was reaching into his
20 vehicle. So with respect to this question again, does Miss
21 Jackson support plaintiffs' case? I submit the answer is, not
22 at all.

23 The next witness I'd like to talk about is Mr. Ingram.
24 Mr. Ingram was an interesting witness for sure. If you recall,
25 I'll show you where he lives in relation to the scene. He says

1 he was in 648, which is back here (indicating), and during the
2 incident he never left his unit. And that he observed what
3 happened from his window. And he's over here. And this was
4 what he told you. This was his version of events. And this
5 was, again, plaintiffs were calling this individual suggesting
6 to you, Here's someone that will support our case. Here's
7 someone that will prove to you that Mr. Boyd was not reaching
8 into the vehicle at the time the shots were fired. They call
9 Mr. Ingram.

10 Well, what did he actually testify to? He said he saw
11 Mr. Boyd reach twice to the left into the SUV before the shots
12 were fired. He told you that after the second reach that the
13 shots were fired within a blink of an eye, and both hands of
14 Mr. Boyd were going into the vehicle with that second reach.
15 Both hands. That's what Mr. Ingram testified to. And
16 Mr. Ingram said, from his perspective, he lost sight of both of
17 Mr. Boyd's hands when he reached into the vehicle, just before
18 the shots were fired.

19 Now, there were some issues with respect to Mr. Ingram
20 and whether he had some bias against the police, and suggests
21 he did, he'd been arrested several times by the SFPD, and we'll
22 see later how that bias may have come into play in the way he
23 tried to shape the story against the police. We'll talk about
24 Mr. Ingram's credibility. I have a question mark there because
25 I'm not suggesting that nothing he had to say is credible or

1 that he's a dishonest man. But the issue of him stealing his
2 mother's car did come up, and that's something you can evaluate
3 in terms of a witness's credibility.

4 With respect to the bias, Mr. Ingram, like
5 Miss Wilson, like Miss Cranshaw, again seemed coached to say
6 that it wasn't reaching, really. He wanted to use the term
7 "bracing." Bracing, moving both his hands to the left inside
8 of the car, he thought that was just bracing, rather than
9 reaching. All right. Because he realizes that because he's
10 testifying that he saw him reaching into the vehicle when he
11 was shot, then the shooting was completely justified. And for
12 whatever reason, he doesn't want to say that. Although he is
13 honest enough to be able to say what he saw and what he didn't
14 see, in most respects.

15 What did he really observe? He says he doesn't recall
16 the hands being up during the time of the shooting. Which is,
17 of course, I guess one of the reasons they're calling him, but
18 he says he doesn't remember that.

19 He did talk about the high five story. If you
20 remember this. And this gives a window to how this crazy story
21 got started and spread throughout this community. In trial, he
22 testified that, Yeah, I saw that, I remember it. And he
23 described it in detail, that there were five or six officers,
24 they were slapping five. It was -- really bothered him when he
25 saw it.

1 And then later, if you recall, in his
2 cross-examination, and using his deposition, said, Now,
3 Mr. Ingram, are you sure that you saw that? As opposed to just
4 being something that someone told you? And then in his
5 deposition, he admitted, and we read that to you, that he
6 wasn't sure at all that he really saw that. That it might just
7 be that he had heard it from somebody, and he's getting the
8 things confused as to what he actually saw and what he heard,
9 what people in this community were talking about. We'll call
10 that the myth that grew out of the Larch Way incident. And he
11 indicated in his deposition that at least from his perspective,
12 the source of the story of the high fives was from Dana, the
13 woman he was playing cards with. And he admitted that she has
14 a tendency to say things that aren't true.

15 So how reliable is Mr. Ingram's recount of the high
16 five story, which really doesn't have that much bearing on the
17 case other than as to the witness's reliability? At least in
18 his deposition, Mr. Ingram was -- and I'm not saying that he
19 even had a different recollection here and was trying to
20 deceive you, but at least in his deposition he admitted that he
21 didn't really know where that information came from.

22 Now, accepting Mr. Ingram's testimony, a witness they
23 called to prove that issue to you, his testimony was absolutely
24 devastating to the plaintiffs' case and their theory of the
25 case. If you believe Mr. Ingram, then Mr. Boyd reached twice

1 into the car with both of his hands before the shots were
2 fired. And that's the same thing you're hearing from Officer
3 Paine, from Officer O'Malley, from Officer Elieff, Officer
4 Stearns, and Joe Campos. That's devastating to the plaintiffs'
5 case.

6 And he lost sight of his hands both times. Officers
7 are yelling at him louder during the second reach. And if you
8 remember, he said it was his impression that Mr. Boyd was
9 definitely not doing something the officers wanted him to do.
10 They were increasing their volume, they were yelling. In other
11 words, it was his sense that the officers didn't say, Would you
12 mind reaching into your car, please, sir?

13 Again, Mr. Ingram testified that the second reach was
14 a bigger movement, a more drastic movement to the car. Just
15 like what the other credible witnesses are saying.

16 And, finally, that Mr. Boyd was shot within the blink
17 of an eye after the second reach into the car.

18 If you believe Mr. Ingram's testimony, plaintiffs
19 cannot prevail.

20 So a witness they called, Mr. Ingram, does he help
21 support this proposition? I submit that he does not.

22 Now, the next witness I want to discuss, and that is
23 Mr. Campos. Plaintiffs called him in their case. And
24 Mr. Galipo suggested to you it was because he wanted to be fair
25 and give you all the evidence. I suggest to you another

1 motivation they may have for calling him, to try to trip him up
2 because they knew how devastating his testimony was to their
3 case. And how credible and believable he was as a witness. So
4 they didn't want him to come on and tell a story first. They
5 wanted to be able to mix him up, maybe get him confused, make
6 fun of him because he doesn't know what a floorboard is.

7 Let's talk about Mr. Campos's testimony. His
8 perspective.

9 He was in 618, and that's the number that's right
10 under here. He was in 618. He unquestionably had the bird's
11 eye view of this event. He saw everything and everything was
12 completely within his vision to see. If you recall, Mr. Galipo
13 attempted to suggest that everything Mr. Campos could see
14 Officer Paine could see as well, and then I objected, of course
15 that doesn't make any sense, and Mr. Galipo said, Well,
16 technically maybe Mr. Campos was on the third floor. It's not
17 technically he's on the third floor. He was in the third floor
18 window, and he had a vastly different and better view than
19 Officer Paine who was on the ground.

20 So as to whether Mr. Campos could see both hands when
21 Mr. Boyd was reaching, how does that relate to what Officer
22 Paine can see on the ground? And we'll discuss that in a
23 moment, a few minutes later, but does that really matter?
24 Mr. Campos is so clear about what he saw in terms of seeing
25 Mr. Boyd reach. He thought he was reaching for something. The

1 second movement that he made was more drastic than the first.
2 And that's when the shots were fired.

3 But let's talk just for a minute about Mr. Campos's
4 view, and this is Exhibit Y-501. If you recall, we had -- or
5 Mr. Jason went to Mr. Campos's apartment after there was no one
6 living there any longer, and took photographs that show
7 Mr. Campos's view. And that's this program right here, V5-01.
8 And this area right here. That's where we're talking about,
9 the SUV. That's where Mr. Campos was when he saw this entire
10 event unfold.

11 You'll notice the north sidewalk is under here, not
12 directly in his line of sight, but directly in his line of
13 sight is this entire area. No one with a better vantage point,
14 including the officers.

15 So let's talk about what Mr. Campos's testimony was.
16 We discussed he had the best view. It was suggested he was the
17 defense witness, our witness, on the side of the SFPD. You
18 will have to evaluate how credible you found his testimony, and
19 whether he seemed like he was eager to be here, whether he
20 seemed like he injected himself into this controversy because
21 he really wanted to help the police department. Or was he just
22 an individual who got caught up in this like everyone else and
23 he's telling you what he saw.

24 You remember how he came to be involved in this case
25 in the first place. He saw what happened and he told his

1 mother, and he didn't want anyone else to know that he saw what
2 occurred. And his mother told him, No, this is important, you
3 saw what happened, you need to tell the police. You need to
4 talk to them about what happened. So because of that, he did.
5 Reluctantly, he did. And he told the story to Homicide
6 inspectors, even knowing at that time the area in which he was
7 living, that his testimony would be favorable to the police
8 because of what he saw, knowing that if people knew about that,
9 he would be at risk for his own personal safety. He did it, in
10 part because of his mother's bidding.

11 And then what happened? Mrs. Boyd made the danger to
12 Mr. Campos and his family very real. When she went to his
13 house outside in front of anyone who could be listening on
14 Larch and told him that he didn't have to go to his deposition,
15 not only did he take that as an understanding he didn't need to
16 go and he didn't go, but when he communicated this to his
17 mother -- or actually she's standing right there with him --
18 she became terrified for his safety. And she refused to let
19 him participate any longer. She would not let him tell his
20 story again. Because she was afraid for her safety and for her
21 family's of what might happen if people knew Mr. Campos's
22 testimony.

23 MR. GALIPO: Your Honor, I'm going to object as
24 mischaracterizing what the state of mind was of Mr. Campos's
25 mother. She never testified.

1 THE COURT: There was limited testimony regarding
2 Mr. Campos's mother. I don't know if it went as far as this,
3 but again, ladies and gentlemen, you will have to decide
4 whether this is a reasonable inference or not to be drawn from
5 the testimony.

6 MR. LOEBS: Mr. Campos also testified that based on
7 that contact, he himself became fearful for the reasons I
8 described before in that if people knew in the neighborhood
9 that he was giving testimony that could be favorable to the
10 police, he knew that could endanger his life as well. So he
11 refused to be involved anymore in this incident. And would not
12 give his testimony.

13 Finally, he moved. There were court orders. His
14 deposition was allowed to take place here in this building
15 going through metal detectors. And he finally told his story
16 on the record that could be used in the trial.

17 And then, of course, he came to trial and told and
18 said the same thing to you.

19 Now, Mr. Campos's testimony, if you accept that and
20 nothing else, plaintiffs cannot prevail. He told you that
21 Mr. Boyd was seated, sitting, with his back to the door. Not
22 on the seat. But he was in a sitting position with his back to
23 the door. He didn't say or use the word "floorboard" because
24 apparently he doesn't know or use that word to refer to the
25 area where Mr. Boyd was seated. So what? You heard his

1 testimony. He said Mr. Boyd was seated just like he is now, in
2 that witness chair, with his legs just like they were, parallel
3 to the ground. Facing out of the car.

4 And isn't that exactly the same position that Officer
5 O'Malley described, Officer Stearns, Officer Elieff? And isn't
6 that similar to exactly the same position that Dr. Smith told
7 you that Mr. Boyd was in when he was shot? And Mr. Jason.
8 Based on their analysis of the physical evidence. That's what
9 Mr. Campos testified to. He didn't say he was standing. He
10 said he was seated.

11 Now, whether he's seated or standing or leaning,
12 that's not the most important issue in the case. Really
13 doesn't even matter that much. It's the reaching. It's the
14 hands moving in the vehicle. That's what matters. And that's
15 what Mr. Campos's testimony was and that was powerful. He said
16 first when Mr. Boyd was back in the vehicle, he was looking,
17 looking around. Looking to the left, as if to grab for
18 something. And he turned quickly, and the officers' voices
19 raised in volume and he came back around with his hands up.
20 Just like what Officer Paine described. Just like what Officer
21 Elieff and Officer Stearns told you.

22 Then he said Mr. Boyd started looking over his
23 shoulder again like he was looking for something, like he
24 wanted to do something. And then he made a second bigger
25 movement into the car with both hands -- and this is

1 critical -- he testified that he saw both hands move into the
2 car in front of the driver's seat. Exactly the same location
3 where we find all the blood evidence. The same location where
4 his hand must have been for the trajectory to match with the
5 left leg, thigh injury, and just like what Mr. Campos said.

6 Also the same description of Officer Paine, the same
7 description of Officer Elieff, Officer Stearns.

8 And he said that when this occurred, that's when the
9 shots were fired. Mr. Boyd was shot when he was reaching into
10 the car.

11 Now, one other thing Mr. Campos said that I didn't
12 mention here, is that he had the window open, he could hear
13 what was being said. And you heard Mr. Boyd say words to the
14 effect of, "Shoot me, shoot me if you want to, or you can shoot
15 me."

16 Officer Elieff testified he heard the same thing. Now
17 that's the relevant to when we're talking about the issues
18 related to the suicide-by-cop stuff. That doesn't mean that he
19 is reaching in the vehicle because Mr. Campos heard that, but
20 that is important testimony that he gave on that issue. So
21 we'll talk about that later, but did plaintiffs prove this
22 proposition with testimony of Mr. Campos? Absolutely not.

23 Now, the next witness on Larch that I'd like to talk
24 about, I believe should be the last, and that's Miss Wilson. I
25 made some reference to her before. Let's talk about her

1 testimony. First, we'll talk about where she was. Because her
2 name and Officer Warnke's name start with the same letter, I
3 put a "WI" for Miss Wilson. She was in 638. So that's
4 approximately here. She could have been in a different window,
5 approximately this location (indicating), and I want to talk
6 first, before we get into her version of events, about her
7 issues related to bias.

8 She attended the candlelight vigils, which we said
9 could obviously influence a percipient witness. She actually
10 helped Mrs. Boyd by taking photographs, was given a camera by
11 Mrs. Boyd to help participate in her work on this case. Which
12 I submit is a very odd thing to do with a percipient witness.
13 She added testimony about the high fives to try to help the
14 case. If you recall, she had this story about seeing the high
15 fives, but then when we went back to her earlier interviews
16 that she gave, shortly after the incident, she was asked if she
17 saw anything happening, what were the officers doing, did you
18 see anything else; she said no. Didn't say anything about the
19 high fives then at all. Had the opportunity to discuss it, was
20 asked what did the officers do, what did you see them do next,
21 did you see them do anything else -- didn't say a word about
22 it. The high five testimony didn't come up until years later
23 at her deposition.

24 And isn't it interesting with her testimony how she
25 was coached, seemed to be coached in the same way to say, I saw

1 him with both hands go into the SUV, with his back to me, his
2 back to the officers, both hands in the SUV, with his back to
3 the officers. But she said at some point, He wasn't reaching,
4 he was just bracing himself. Wasn't reaching for anything.
5 Just bracing himself. She obviously wanted to help plaintiffs'
6 case.

7 But she didn't. Her testimony, even with her strong
8 bias, is devastating to plaintiffs' case, because what she said
9 is that Mr. Boyd appeared at the time of the incident without
10 benefit of 20/20 hindsight, same kind of situation the officers
11 are in, at the time of the incident, it appeared to her that he
12 was reaching with both hands for something when he got shot.
13 And isn't that exactly what the analysis of the imminent lethal
14 threat would be from someone who the officers reasonably
15 believed had a loaded gun in their car, that they were willing
16 to shoot at police?

17 Now, Mr. Galipo suggested that what she was describing
18 was similar to what Mr. Bradshaw described. You know, if
19 someone wanted to sit, their hands might go back to either side
20 and maybe brace themselves on something to help them sit. Not
21 as an emergency situation, but that's the way someone with
22 prosthetic legs might want to sit. Arms to the side. That's
23 not her testimony. Mr. Galipo suggested that it was in his
24 closing arguments, and that's simply false. She testified that
25 when she saw Mr. Boyd's hands go into the vehicle, she saw both

1 hands go into the vehicle with his back to the officers, not to
2 the side, bending over; both hands into the vehicle, with his
3 back to the officers.

4 I had her at her deposition, and which is
5 Exhibit C2-42, indicate where from her vantage point, which was
6 a bit away, where she saw both of his hands go with his back to
7 the officers, and she put an "X" in this location where she saw
8 both of his hands. That's her "X." That is an imminent lethal
9 threat. That justifies the officers seeing that action, firing
10 their weapons to stop that threat. And that, I submit, is the
11 reason why you did not hear from Miss Wilson in the plaintiffs'
12 case.

13 THE COURT: Now, when you finish Wilson, that will be
14 a time that we should break, because it's now about 12:35.

15 MR. LOEBS: I'm very close. Very close.

16 THE COURT: As I say, you can finish up this
17 discussion, and then between witnesses that's when we'll break.
18 All right.

19 MR. LOEBS: All right. Just a couple more things.
20 This witness discussed that it's not the side, his hands were
21 not in front. But as I said, she's the one that testified she
22 talked with Tootsie, Miss Jackson, about what she had observed,
23 and Miss Jackson told her that Miss Jackson saw the same thing
24 when Mr. Boyd was shot, that she also saw Mr. Boyd reaching
25 into the car with both hands when the shots were fired.

1 Now did Miss Wilson's testimony support the
2 plaintiffs' case? And I think as you might guess, I believe
3 the answer is no.

4 That concludes the discussion of the Larch Way
5 witnesses. And we'll take our break, and we'll come back and
6 I'm going to talk about the other witnesses, the police
7 officers and the physical evidence.

8 THE COURT: Okay. Ladies and gentlemen, let's make it
9 an hour again. I think we can still conclude -- well, before
10 you leave, let me just make sure.

11 Thinking back. A quarter to, 25 to 2:00, and then how
12 much more are we looking at with your argument, do you think?
13 I'm sorry, just an estimate.

14 MR. LOEBS: I'll attempt within the lunch break to try
15 to cut out some of what I had to discuss. So if we come
16 back --

17 THE COURT: Just approximately. I mean, I could try
18 and make the lunch break shorter.

19 MR. LOEBS: That might help, if it's not inconvenient.
20 I'd certainly try to finish my, I think --

21 THE COURT: Within about how much more time,
22 approximately?

23 MR. LOEBS: An hour and a half?

24 THE COURT: Okay.

25 MR. LOEBS: That was my prelunch estimate. I'll try

1 to shorten it.

2 THE COURT: If it were an hour and a half, and we came
3 back at -- I'll just round it off to quarter to 2:00 for a
4 moment just because I'm trying to do it easily. If it were an
5 hour and a half, from then, then we would be talking about
6 3:15, and that wouldn't leave too much time for Mr. Galipo. I
7 would like, if possible, to conclude the arguments today rather
8 than have him come back and then have another part on Monday.

9 MR. LOEBS: I'll make it within an hour, your Honor,
10 if that would --

11 THE COURT: That would help. Why don't we -- can you
12 live with 45 minutes for lunch, ladies and gentlemen? Okay.
13 We'll take a 45-minute lunch break. What does that come out
14 to? 25 after. Thanks you. Okay, 25 after 1:00 -- no, that's
15 not right, Mr. Wiener. 20 after.

16 Okay, 20 after; is that correct? I'll say 20 after.

17 JUROR: It's in between.

18 JUROR: We can do that.

19 THE COURT: Thank you very much, ladies and gentlemen.

20 (Luncheon recess)

21 (In open court; jury present)

22 THE COURT: Thank you for being back promptly, ladies
23 and gentlemen. We'll continue with Mr. Loebs' closing.

24 MR. LOEBS: Good afternoon. When -- in my last
25 remarks I was talking about the testimony from the witnesses on

1 Larch Way as to how it relates to this critical issue I've
2 talked about before.

3 Now I'd like to talk about the testimony from the
4 police officers. And, first of all, with respect to the police
5 officers, as with the other witnesses, their perspective of
6 these events is also something important to keep in mind in
7 evaluating the evidence. And one thing I'd like to remind you
8 of is with respect to the police officers, they knew what was
9 happening with respect to this event. They knew information, a
10 lot of information, that the people on Larch did not. They
11 knew that Mr. Boyd was wanted for threatening a woman with a
12 gun. They knew that he was fleeing from the police at high
13 speeds. They knew that he had shot at the pursuing officers.

14 They knew that he had a loaded gun or had reason to
15 believe he had a loaded gun in the SUV. They knew he was
16 willing to use that gun to kill them. Their lives depended on
17 being focused on Mr. Boyd's actions and looking for any
18 indication that he might be bringing that gun to bear or going
19 near where that gun might be, to protect their lives, the lives
20 of their partners and the lives of people that lived on Larch
21 Way from Mr. Boyd.

22 So in evaluating their testimony, many of them were
23 called by plaintiffs. Regardless of who calls a witness, let's
24 talk about how it relates to that important issue.

25 Sergeant O'Malley. Sergeant O'Malley's testimony, if

1 you recall, he was very clear, Mr. Boyd was not following the
2 orders that were given. He was seated on the floorboard after
3 he turned back to the SUV. He reached twice into the car with
4 both hands. Sergeant O'Malley lost sight of Mr. Boyd's hands
5 when he reached into the car.

6 In particular, I want to focus on the second time.
7 The officers were yelling even louder at Mr. Boyd at the time
8 he was reasoning into the vehicle, the second time. Mr. Boyd
9 had a look of resignation on his face before the second reach,
10 similar to what other witnesses have described. Sergeant
11 O'Malley described the second reach that Mr. Boyd made as a
12 bigger, more aggressive movement to his left into the car.
13 Sergeant O'Malley thought for sure he's going for the gun this
14 time. And Sergeant O'Malley testified to you that he
15 hesitated, and he gave him a chance he shouldn't have. And in
16 fact, the evidence will be at some point or another all the
17 officers at that scene hesitated and gave Mr. Boyd every
18 chance, in fact more than they should, to surrender and be
19 taken into custody.

20 Sergeant O'Malley testified as well that he had his
21 finger on the trigger and was about to shoot when he heard
22 Officer Paine's shots.

23 So with respect to Sergeant O'Malley's testimony, how
24 did that relate to plaintiffs' burden? Pretty clearly, he
25 didn't support their case.

1 Officer Paine, let's talk about his testimony.
2 Officer Paine explained to you that he is a specialist. That's
3 a part of the San Francisco Police Department. It's one
4 percent of the police force. These officers are permitted to
5 carry assault rifles in their vehicle. Why? Because they have
6 specialized training with weaponry. They use weapons and
7 they're familiar with weapons more often than other officers.
8 They have physical fitness requirements other officers do not.
9 They train to make that critical shooting decision more often
10 than other police officers.

11 Part of what they do in the specialist unit is protect
12 visiting dignitaries such as heads of state. Officer Paine
13 testified to that. In terms of trying to analyze this case, if
14 it mattered, which it doesn't, as to why might Officer Paine
15 have fired sooner than others, perhaps it's because he has this
16 specialized training that allowed him to make that critical
17 decision at that point. But even in Officer Paine's situation,
18 he hesitated. He waited. He gave Mr. Boyd more chances than
19 he should have. And they all put their lives at risk at some
20 point because making that decision, even when someone's doing
21 something you know might threaten your life, is an incredibly
22 hard thing to do.

23 But finally, when Mr. Boyd reached in that second
24 time, Officer Paine fired.

25 Officer Paine's testimony. Boyd reached twice to the

1 left with both hands. Officer Paine yelled at him, "Don't
2 reach, stop what you're doing, put your hands in the air."
3 Why? Is it because he wants to shoot him that he's yelling at
4 him? No, he's trying to use the only other weapon he has at
5 his disposal to stop Mr. Boyd, and that is his voice. When
6 that failed, he had no choice.

7 Office Paine testified that just before Mr. Boyd
8 reached the second time, it looked like a light bulb went off
9 in his head. And then he made the second move. Officer Paine
10 testified that Mr. Boyd's second reach was bigger, a more
11 drastic movement into the car, and they lost sight of both
12 hands during the second reach. With his hands going to the
13 left side into the interior of the vehicle, which is what
14 Officer Paine told you. Officer Paine fired because he
15 believed that Mr. Boyd was reaching for a weapon.

16 Given all that he knew, this individual would now come
17 back to the vehicle, where the weapon was located, where he had
18 every reason to believe the weapon still was. He knew that
19 Mr. Boyd had fired at police officers before, and when he saw
20 him making the move into the car, he had no choice but to fire
21 his weapon. No choice. And the person who gave him that
22 choice, was Mr. Boyd.

23 So with respect to Officer Paine's testimony, does
24 that support the plaintiffs' case? No. It does not.

25 Officer Stearns. What did he tell us? He also

1 testified that he saw Mr. Boyd reach twice to his left into the
2 vehicle. He lost sight of both hands when he did that. He was
3 yelling as the other officers were, louder when he made the
4 second reach.

5 And just for your perspective quickly, Officer Stearns
6 where he's located is right here (indicating.) Officer Paine
7 is here. Officer O'Malley is here. All with a clear visual of
8 what Mr. Boyd is doing and where he was in the SUV.

9 Officer Stearns also testified that he saw a bigger
10 movement into the car. And remember that when we're talking
11 about the officers and their attention to what's happening, the
12 witnesses on Larch Way, Mr. Rogers talking to Mr. Harris, they
13 may have other things they're doing. Their lives are being
14 interrupted perhaps, maybe they're distracted by something.

15 For these officers, there's nothing more important
16 than focusing on what they see happening in front of them.
17 Because their lives depend on what they see happening in front
18 of them. That's a different perspective from the witnesses on
19 Larch. And when these officers are describing what they saw,
20 you heard them testify and you can evaluate whether you thought
21 they were making it up, whether they seemed truthful, whether
22 they seemed in fear that their lives might be taken if Mr. Boyd
23 brought a weapon to bear. That's something for you to
24 evaluate.

25 And you heard Officer Stearns' testimony. When he

1 talked about how he was about to shoot but didn't, and what he
2 thought about the fact that he hesitated, you can evaluate
3 whether that seemed truthful, whether that seemed like it was
4 something he was making up on the stand.

5 Officer Stearns testified that he was sure Mr. Boyd
6 was reaching for a gun. Based on everything he knew, and as I
7 said, based on the information that no one on Larch had.

8 So does Officer Stearns testimony support plaintiffs'
9 case? Support their burden? Not at all.

10 Officer Warnke. Now, plaintiffs' counsel in his
11 closing suggested a lot to you about Officer Warnke, Listen to
12 Officer Warnke. If you listen to what he had to say, that will
13 help prove our case.

14 Let's talk about what Officer Warnke testified to. He
15 testified that he saw Mr. Boyd make one or two, I think maybe
16 even he said three quick movements into the car turning to his
17 left. The third movement was bigger in that where Officer
18 Warnke was situated, we're talking now looking at the exhibit,
19 Officer Warnke is back in the rear of this parking stall,
20 somewhere around here, and where he was on the third movement
21 he lost sight of Mr. Boyd except all perhaps his lower legs and
22 maybe the side of his head. And at that time he thought for
23 sure that Mr. Boyd was reaching into the car for a gun.

24 You should ask yourself, if we believe Officer
25 Warnke's testimony, does that support plaintiffs' case?

1 Officer Warnke also testified at that moment when he saw
2 Mr. Boyd turn to the left, and his body was shielded by the
3 door, he was about to shoot through the door because he
4 realized the threat was so great. So does Officer Warnke
5 support plaintiffs' case? Not at all.

6 Now, you will notice when I have talked about some of
7 these witnesses that there are aspects of their testimony that
8 I haven't discussed, plaintiffs' counsel focused on. About
9 exactly how someone was positioned. About how they were bent.
10 About where a hand was at this time, where a hand was at that
11 time. Whether Officer Paine saw the -- Mr. Boyd exactly the
12 same position or remembered it that way as the other officers
13 did. I'll talk about those issues when I talk about what I
14 refer to as the red herrings in this case. That is, issues
15 that don't really matter that are designed to distract you from
16 this critical issue.

17 Because really in terms of whether Mr. Boyd was moving
18 his hands into the SUV when Officer Paine fired, what does it
19 matter exactly how his physical position was in terms of these
20 officers' recollection? Whether he was somewhat in a relaxed
21 leaning position, whether they remembered his knees being
22 exactly at 90 degrees? This is a fast evolving crisis event
23 for these officers, and they're being asked to recount it in
24 infinite detail, some time later.

25 So what really matters in terms of what they recall?

1 The reaching is what matters. The movement into the car is
2 what matters. And in term of their consistency as to what they
3 describe, it's very consistent. It's generally the same thing.
4 We have Officer O'Malley, Officer Stearns and Officer Elieff,
5 haven't gotten to him yet, describing the very same situation,
6 being able to see the move into the car, making the turn to the
7 left. Officer Paine says he recalls it a little bit different,
8 but does that matter? Does that mean that he didn't see him
9 reach into the vehicle? No, that's just an issue to distract
10 you from what are the merits of the case.

11 So we talk about Officer Elieff. Officer Elieff's
12 testimony. You recall he, like Mr. Campos, heard Mr. Boyd say,
13 "Shoot me if you want to." He also saw Mr. Boyd reach twice
14 into the SUV. The second reach, again, he saw being a bigger
15 movement to the left and the right hand was following. He also
16 thought for sure that Mr. Boyd was reaching for a gun.

17 And remember that Officer Elieff, who got caught up in
18 this mess, who was the loan officer in the lead pursuit
19 vehicle, who was being shot at by Cammerin Boyd, had the
20 presence of mind, even though he's only five months off
21 probation, to be driving a vehicle with one hand calling in a
22 pursuit with the other, and then out of his car confronting
23 this dangerous individual on Larch. You heard his testimony
24 about how even today, how traumatic this event is for him to
25 recall. So Officer Elieff, did his testimony help plaintiffs

1 establish their burden? No.

2 Now, I've talked about the police officers, and I want
3 to go back to Dr. Keram in this part of the analysis, part of
4 my presentation as well. Now, obviously we've talked about all
5 the police officers who have testified. But Dr. Keram's
6 analysis and her opinion was important in this case, and that
7 is, if you knew nothing else, if you knew just about the
8 pursuit and what happened on Larch Way, you might be thinking
9 to yourself, What an odd thing to be doing? I mean, he's out
10 of the car doing something like surrendering, maybe, he's got
11 his hands up, he's got his hands down, he goes back to the car,
12 then the officer says he's going for a gun? What chance would
13 he have to get away with that? If he brings a gun to bear, all
14 the officers that are surrounding him, what possible chance
15 does he have to get away? Is he going to shoot all the
16 officers? Why would someone do that? Why would they do that?

17 And the answer, we believe Dr. Keram looked at this
18 very carefully, and it's an unfortunate part of life, it's ugly
19 to think about. But Dr. Keram explained to you that in her
20 opinion, this was a suicide by police. And she didn't just
21 come to this decision rashly and without looking at any
22 evidence. She looked carefully at everything she could about
23 what happened in this incident.

24 Her testimony explains Mr. Boyd's bizarre behavior
25 that night. First, she discussed why would he be suicidal?

1 Well, she explained his life was not going well at that point.
2 He was facing a 15 to 28-year prison sentence. It was coming
3 up shortly. And he did not have a good time in prison. No one
4 would, but it's exceptionally bad for Mr. Boyd.

5 When he entered Larch Way, before he made that final
6 decision, that final movement in the car, he had to know that
7 what he had done that day was going to cause him to spend the
8 rest of his life in jail. He had accosted Miss Williams and
9 threatened her with a gun. Mr. Brass explained what the
10 consequences of that could be. He then accosted Miss Hogan and
11 threatened to kill her with the same gun that we now know is
12 loaded. Mr. Brass explained what the consequences of that
13 would be. And then he attempted to murder police officers.
14 That alone would get him life in prison. We're not even
15 counting the high-speed chase and that he's fleeing from a
16 pursuit. We're not even considering that.

17 So when he is sitting in Larch and whatever he's
18 thinking, he's making the decision, Do I do this or not? Do I
19 make a move that causes the police to shoot and kill me? I've
20 already gone to my belt, they didn't shoot me. I have taken my
21 shirt off, they didn't shoot me. I have reached once into the
22 SUV, I haven't been shot. Now, do I do it?

23 He had to know at that time, If I let them take me
24 into custody, I will spend the rest of my life in jail. Not
25 something that he or anyone would want to do.

1 And so that's what he did.

2 Now, Dr. Keram explained, because you heard this
3 testimony, go through it rather quickly, that there was -- the
4 question was, was there evidence that he was suicidal or not?
5 The very last evidence the plaintiffs put on were to call
6 Mr. DuFauchard and to call Mr. Boyd's ex-wife. To say they
7 didn't think he was suicidal. He wasn't behaving suicidally.
8 He didn't have any problems like that in his life. Well, isn't
9 it interesting who they didn't call to discuss that? Ms. Boyd
10 did not take the stand and talk at all about that issue. And
11 she could have. Her silence on that speaks volumes.

12 Isn't it also interesting that when Dr. Keram wanted
13 to get the psychological record related to his psychiatric
14 treatment Mr. Boyd had, the plaintiffs denied her ability to do
15 that.

16 MR. GALIPO: I'll object, your Honor, as assuming
17 facts not in evidence, that there were any psychiatric records
18 or psychiatric treatment.

19 THE COURT: I'm not sure I heard the exact phrase just
20 a minute. Well, there isn't the statement that there were. I
21 don't know if there's any evidence, but there was a record,
22 there was evidence that she sought to get any record if there
23 was one. And the Court will inform the jury as to the law
24 regarding that at the time. I'll overrule.

25 MR. LOEBS: With respect to her request to get the

1 records, the evidence came in that the plaintiffs filed a
2 motion to stop that from happening. Why would you do that if
3 there are no records? No reason to make a motion if there's
4 nothing there.

5 And then in cross-examination, Mr. Galipo made a big
6 deal of whether she saw any records related to Mr. Boyd having
7 suicidal ideations.

8 Dr. Keram explained why would someone choose to have
9 the police end their life. Presented evidence Mr. Boyd did not
10 like the police. He blamed them for losing his legs in 1993.
11 Filed a lawsuit against the CHP officer whom you saw testify
12 about the 140-mile-an-hour, high-speed chase. He blamed them
13 for everything that was wrong in his life. He gets arrested,
14 he sues them. He's in jail, he sues them. Evidence of his
15 hatred for the police is contained in each word he wrote about,
16 talking about murdering police officers and having with that a
17 picture of a murdered police officer. You heard that from
18 Officer Moody.

19 Another motivation for why someone might choose to
20 have the police help end their life is that they get someone
21 else to pull the trigger. Dr. Keram explained that. She also
22 talked about why then. Why would it happen at that moment.
23 You remember the testimony you heard through the deposition
24 that was read of Lois Boyd, Ms. Boyd's sister. Ms. Boyd's
25 sister said that the night before this happened, the family was

1 trying to fly Cammerin Boyd out of the state to Atlanta because
2 they were fearing for his life with contact with police. And
3 instead of going on that flight, he took his gun, got in the
4 SUV, unbeknownst to his mother or Lois Boyd, and came into
5 San Francisco for the rampage that we've talked about. That,
6 as Dr. Keram described, is abnormally abnormal behavior.

7 He knew his criminal trial was coming up soon. Maybe
8 28 years in jail. And Dr. Keram explained he just passed the
9 anniversary of the CHP accident in which he lost his legs. And
10 we got to Larch, as I explained, he's facing life in prison.
11 So what evidence does she have to support her opinion?

12 Now, one thing I'm going to talk about in terms of the
13 burdens in this case is the defendants do not have the burden
14 to prove anything. When you go back and look at the jury
15 verdict, there will not be a question you have to fill out as
16 to whether Mr. Boyd committed suicide by police. This evidence
17 was offered to help explain why he would have been doing the
18 actions that he did. Why is it more likely that he's not just
19 giving up, that he's not just surrendering, that he's actually
20 taking it to another level to force the officers to shoot him?

21 And what evidence did Dr. Keram have to support this?
22 She talked about Oakland the few days before. She talked about
23 this as a practicing event where he enticed the police to chase
24 him, not just by driving by once but several times, getting
25 them to pursue him. Sometimes they even broke off the pursuit

1 and he came back again to the same area. And then when they
2 finally had their hands on him, he was repeatedly begging for
3 the police to kill him.

4 This also explains his actions in San Francisco a few
5 days after the incident in Oakland, when now he's doing the
6 same thing trying to get more attention, the most negative
7 attention you can get, because he's at the Tenderloin police
8 station spinning donuts, then he attempts to accost a woman or
9 does accost a woman at gunpoint, then he goes to another
10 location next to Northern Station and accosts another woman,
11 threatens to kill her at gunpoint. Doesn't leave the City.

12 Now he gets the police attention he's looking for. He
13 engages in a high-speed pursuit. And then he gets all the way
14 back to where he started in Larch and he gets out of the
15 vehicle. One thing that occurred to me, and I think I
16 discussed it before, if he was saying to people, either before
17 to his mother or to the officer we had testify that said he
18 seemed to be paranoid about the police, or to people on Larch
19 that the police were trying to kill him, or that they were
20 going to kill him, why would he be thinking that? Unless he
21 had in mind that's what he was going to make happen.

22 Another thing to consider is the high-speed pursuit
23 he's engaged in doesn't make any sense. Can't -- from really
24 any standpoint. What is he doing? He's running from the
25 police. He's shooting out the door of his car at pursuing

1 officers. Can anyone think that's going to stop the police
2 from pursuing him, or just encourage them to do? And with his
3 limited mobility, what does he think's going to happen when he
4 gets to the end? He can't get out and run somewhere like
5 someone else might. He knows this is setting this up for a
6 confrontation with the police, and that's what happened. And
7 that's why I wrote down here, Was he really fleeing after all?
8 Or was he just inviting the police to a location where this
9 could happen?

10 Dr. Keram's opinion was that it was a suicide by
11 police. And she also talked about the drugs that he was
12 taking, how that might affect his behavior. Dr. Mendelson
13 spoke to this as well. She explained that the drugs that he
14 had could have caused a depression after they had worn off.
15 Dr. Mendelson talked about the possibility of psychotic
16 behavior you can get from some of the drugs he had in
17 combination. And that the drugs were affecting him.

18 This was confirmed by Miss Williams who said he looked
19 like he was on all sorts of drugs that she could identify. She
20 had some experience with that. And by Miss Hogan. She said
21 the same thing. There's no evidence these two people knew each
22 other and put their stories together. They're two different
23 people who were accosted at two different times by this
24 individual, and they had the same impression of his state of
25 mind and whether or not he was on drugs.

1 Officer Paine said he also thought the behavior that
2 he saw on Larch looked like someone who was under the influence
3 of something pretty serious.

4 Dr. Lemos talked about the amount of drugs in his
5 system. Dr. Mendelson talked in detail about how they could
6 affect someone.

7 So with respect to did plaintiffs prove this point?
8 Of course with Dr. Keram, they didn't. Dr. Keram established
9 that when this incident got to Larch, Mr. Boyd was not about to
10 surrender. He was going to do what he needed to do to get the
11 police to shoot him. As hard as that is to imagine someone
12 doing, Dr. Keram painstakingly explained that this phenomenon
13 exists, and these are the types of behavior someone engages in
14 when they're doing that behavior.

15 So I want to talk about -- we talked about
16 Dr. Bonnell. And before we can get into a discussion about
17 him, I'm going to shift the focus to talking about the physical
18 evidence, because that's what Dr. Bonnell talked to you about,
19 the physical evidence. I'm not spend as much time on this,
20 we've spoken on this already. Dr. Bonnell's perspective --
21 from a physical evidence perspective, rather, physical evidence
22 has no bias. It is what it is. It can be examined, it can be
23 studied, it can be looked at, it can be photographed, it can be
24 reviewed. It can be retested. It can be reexamined. It just
25 needs to be properly evaluated by qualified experts. That's

1 the importance of physical evidence.

2 And Dr. Bonnell. His perspective. Remember, he was
3 retained by the plaintiffs. They called him to the stand. His
4 testimony was devastating to the plaintiffs' case. Because he
5 established through their own witness that the trajectories
6 were just as Dr. Smith described, just as Mr. Jason understood,
7 and that they would accommodate the gunshot wounds from an
8 individual in Officer Paine's position firing these shots with
9 an individual seated on the floorboard of this vehicle with a
10 gunshot wound going first into the left leg. That was
11 Dr. Bonnell's testimony, that would be the first injury, then
12 into the left hand, the same gunshot wound, and then the next
13 shot into Mr. Boyd's side in the abdominal area between the 9th
14 and 10th rib. That was Dr. Bonnell's testimony.

15 He talked about the angle if he's seated being 5 to 10
16 degrees downward position. He talked about the exit wound
17 being lower than the entrance wound in terms of an individual
18 being seated on the running board of the SUV, the running board
19 being about 19 inches off the ground. Dr. Bonnell said that
20 the entrance wound to the left leg would be 24 inches off the
21 ground. And it's his opinion the exit wound would be 23.
22 That's lower.

23 He also talked about the abdominal injury, that being
24 a 5- to 10-degree downward angle.

25 Now, just for a minute let's talk about some of the

1 plaintiffs' -- the witnesses the plaintiffs call to support
2 their case and whether that's consistent with what we're
3 talking about here in terms of the abdominal injury.
4 Dr. Bonnell testified in order for the 10- to 15-degree
5 downward angle, someone would have to be tilted to the right
6 about 10 to 15 degrees. Or they could be lower, such as
7 seated, and there wouldn't be nearly as much tilting to
8 accommodate that. That's not consistent with any of the other
9 witnesses that testified in this case. That Mr. Boyd was
10 standing up and tilted to the right when he was shot in the
11 abdominal area? No one says that.

12 In addition, the 5- to 10-degree downward angle when
13 the leg is parallel, that's like this (indicating). That is
14 not accommodating someone standing in position unless they're
15 doing something like this, which obviously there's no testimony
16 about.

17 As I said before, Dr. Bonnell's testimony was
18 devastating to plaintiffs' case, which as I suggested before is
19 probably why you didn't hear his name mentioned by plaintiff in
20 closing argument.

21 The one thing that he said which is factually wrong in
22 terms of his opinion is he said that if the muzzle was 12 feet
23 away, however, and about 5 feet high off the ground, then he
24 thinks that doesn't work with this shooting event because the
25 angle of the trajectory would have to be 30 to 45 degrees.

1 That is mathematically absolutely provably wrong. If the
2 entrance wound is 24 inches off the ground and the height of
3 the muzzle of the gun is 5 feet, and the barrel of the gun is
4 12 feet away, that's an angle of about 10 degrees, not 35 to
5 40.

6 So on that, although he didn't say he did the
7 trigonometry, he said he would have to -- maybe if he had, he
8 wouldn't have had this opinion at all in this case.

9 So that's the only area in which he testified on this
10 issue that is really irrelevant, because it's just a
11 mathematical error on his part.

12 And as he testified in his opinion, and I think it's
13 been everyone's opinion, every expert that's testified, in a
14 rapid fire situation, shots would tend to rise. I believe
15 Mr. Clark said that, Mr. Jason said that, Mr. Cameron said
16 that, and even plaintiffs' expert, Dr. Bonnell, said that. No
17 evidence or testimony to the contrary. In a rapid fire
18 situation the first shots would be lower and the shots would
19 rise.

20 And based on that, Dr. Bonnell said the first shot
21 would be to the left leg, in the left hand, and if there's a
22 connection between the left leg and the left hand, the left
23 hand has to be below the waist. And also he testified that the
24 crumpling opinion that Mr. Galipo tried to elicit from him
25 would be an unlikely event, an unlikely scenario, that he's

1 shot, falls, and just has to line up his left leg parallel to
2 the ground, hand below it, he said that would not be likely.

3 So did plaintiffs prove their case through the
4 testimony of Dr. Bonnell in this discussion of the physical
5 evidence? No. Proved the opposite.

6 Next I'd like to talk about Dr. Firestone as to
7 whether he's credible or not on any issues in this case. I'd
8 like to discuss that. You remember what he admitted to in his
9 testimony. That when he first reached his opinions in this
10 case, not only had he never been to the scene of the incident,
11 not only had he never looked at the SUV, which he's still never
12 done, not only did he never look at any of the physical
13 evidence before he forms his opinions, he'd never even seen any
14 photographs of the SUV, the blood evidence or anything related
15 to this case.

16 And yet he was called upon by plaintiffs to give
17 opinions about trajectories and other issues in this case, with
18 no information. Regardless of whether he has a PhD, what does
19 that matter if the opinion he reaches is only as good as the
20 information he has, and he has no relevant information?

21 As I said, he formulated his opinions without even
22 seeing any photos of the scene or the SUV. To this day, he
23 still hasn't looked at the SUV. Which is amazing. There's no
24 other piece of evidence more important. If you have to examine
25 blood spatter or trajectories or seating position or how

1 someone could configure in that car, and he couldn't be
2 bothered to come up here from Los Angeles to look at this
3 evidence? I submit the reason for that is he knows what he
4 would find if he did, and it would be precisely consistent with
5 what Mr. Jason told you.

6 And remember when he said this, that the reason he
7 couldn't come up here is because of a geographical barrier?
8 That was just flat out ridiculous. He's in Los Angeles. He
9 can come up here to testify, but he can't go out of his way to
10 look at any of the critical evidence, the clothing, the
11 bullets, the casings, the gun, the scene? Why would they call
12 an expert to come and tell you his opinions when it's based on
13 nothing?

14 Something else about Dr. Firestone. I wrote here that
15 he doesn't know up from down. What I'm referring to is he
16 thinks the anatomical position when he's reviewing an autopsy
17 report is of someone lying on their back. Not someone upright
18 on their feet. If you don't understand the most basic thing
19 about how to read an autopsy report, when you read in
20 Dr. Smith's description of the left leg injury that someone's
21 in the anatomical position, that the wound path is going up,
22 you're going to have no idea what he's talking about unless you
23 know that relates to the body in this position.

24 If you think it relates to them on the ground, you may
25 think it means up to the sky, which is actually what

1 Dr. Firestone thought, and apparently no one disabused him of
2 that before he came and testified about his opinions about the
3 trajectories. If you remember, he had the individual
4 hypothetically sitting on the ground with the left leg parallel
5 and the hand up here. Why did he do that? That's because he's
6 got no idea how to read an autopsy report. That's who they
7 brought here to offer opinions to you about this case.

8 When I talked before about what you do when you have a
9 terrible case, you try to deceive the jury. It's all about
10 slight of hand, and there's no better example of it than
11 Dr. Firestone.

12 Let's talk about Dr. Firestone's opinion about blood
13 spatter analysis. There was no evidence presented by the
14 plaintiffs that he knows anything about this. He has no
15 education in it. No experience. No certifications. He
16 doesn't even know the name of red or white blood cells. He
17 doesn't know the size or shape of free falling blood. How can
18 he come in and do an evaluation of blood spatter in this
19 vehicle when he knows nothing about blood spatter and he hasn't
20 seen the vehicle? He just looks at some photographs and just
21 makes stuff up? He can't name even one organization that
22 studies blood spatter analysis.

23 And this may speak to it more. This probably explains
24 a bit why that is. This isn't what he does. He does
25 slip-and-fall work. Auto accident work. He's not a blood

1 expert. He's not a crime scene analyst. He's not a shooting
2 reconstructionist like Mr. Jason. He's never fired a gun in
3 his life, and he's going to give opinions about weapons? About
4 the injuries sustained by an individual?

5 And if you recall his presentation, Mr. Jason who was
6 examined extensively because he had the audacity to prepare a
7 diagram to help illustrate his opinions, why didn't they have
8 anything with Mr. Firestone? Here's Larch Way, here's what it
9 looked like, here's what I'm saying about the way the bodies
10 are positioned and how he can't be in that SUV, and you'd have
11 to have two shooters and the shooter would have to move. He
12 used a tape measure in court to illustrate that on Mr. Galipo.
13 How effective was that? When he was doing the demonstration on
14 Mr. Galipo, all he had to do to make the trajectories line up
15 was turn to the left. He could have done this well in advance.
16 He could have done something to demonstrate his opinions. He
17 did it on the fly here in court.

18 Why didn't he use a single exhibit to illustrate his
19 opinions? I have a theory. His opinions made no sense. They
20 were based on the wrong information. And when you're just
21 making things up, the last thing you want to do is clarify what
22 you're talking about. Clarity is your enemy when you're making
23 things up. That was Dr. Firestone.

24 So did Dr. Firestone help prove this proposition? No.

25 Let's talk about Dr. Smith. We covered Dr. Smith

1 already. I'll be brief. His testimony, he said that the angle
2 to the leg would be downward in a seated position, same as
3 Dr. Bonnell. He said that anatomically the angle through the
4 abdominal injury would be downward, and he had no reason to
5 disagree with Dr. Bonnell's estimate of 10 to 15 degrees. He
6 said the wound paths only work if seated on the floorboard.
7 That was his opinion. And the significant thing about this
8 opinion by Dr. Smith is, it wasn't based on an analysis of the
9 blood. Like Mr. Jason's opinion was. It was based on the
10 wound paths alone and the possible seating configurations in
11 this vehicle. That was Dr. Smith's opinion.

12 And if you recall, I had Dr. Smith look at
13 Exhibit U-5, although it wasn't in evidence at that time, and I
14 asked him, looking at this photograph with the individual
15 seated as he is now in the SUV, would that be consistent with
16 your opinions as to the trajectory from -- through the
17 individual as indicated in this exhibit? He said, Yes. Then I
18 asked him, Okay, now let's say, would this be consistent with
19 the trajectories coming from a single focal point? He said,
20 Yes.

21 Although you hadn't seen the exhibit yet, I also asked
22 Dr. Smith to comment on Exhibit W-8. I said, Dr. Smith, based
23 on your analysis of the wound trajectories of Mr. Boyd and your
24 understanding of the configuration of the SUV, how does this
25 relate to your opinions regarding his configuration in the SUV?

1 And he says, Yep, that's my opinion. He says, That would be
2 consistent with my analysis of the injuries and the way in
3 which a body would be positioned to sustain these injuries in
4 this vehicle. That's Exhibit W-8.

5 So did Dr. Smith support plaintiffs' case? Not at
6 all.

7 Miss Springer. Remember she testified about the
8 fibers. I think her testimony is completely undisputed.
9 Remember what I talked about physical evidence in that it's
10 something that can be tested and retested. If the plaintiffs
11 had any questions or concern about her analysis, they could
12 have tested it themselves. They could have had their expert
13 come in, no, no, she's all wrong, they don't match. Why didn't
14 they? Because they are a match. The fibers found in the left
15 hand are the fibers found in his pants, his boxer shorts, and
16 the only way that could happen is if the bullet went through
17 the left leg and into the left hand. I think that's
18 undisputed.

19 And the significance of that fact, especially coupled
20 with the testimony the first shot would have been through the
21 left leg, is that that means we can position precisely where
22 the left hand was at the time Officer Paine fired the first
23 shot, and it wasn't like this, it wasn't raised, it wasn't to
24 the side. It was down to the left below the waist inside of
25 the SUV. Which is, of course, the issue in this case.

1 So Miss Springer? No, she does not support
2 plaintiffs' case.

3 Mr. Jason. You've heard his testimony at length
4 recently, and it was very long, and I will let you know right
5 now I'm not going to go through that in detail because I hope
6 you have it fresh in your mind. His qualifications. This is
7 what he does. He is a blood spatter expert. He is a crime
8 scene expert. He is a shooting reconstructionist. He is not a
9 trip-and-fall, auto accident analyst. He's an expert on these
10 issues. He went to the scene many times. He examined the SUV.
11 Which you wouldn't think I'd have to say is significant but the
12 plaintiffs didn't. And he reviewed all the physical evidence
13 himself.

14 He provided the only diagrams and exhibits to help
15 illustrate his opinions in this case. His testimony, the
16 angles match. The decedent's position with the left hand
17 reaching inside the car. The blood on the floorboard is
18 consistent with the injury to the left hand. The blood on the
19 floorboard, the wound to the left hand injury is consistent
20 with high-velocity impact spatter, which is significant.

21 Now the plaintiffs have made a big deal about the
22 blood. And the reason for that is that if there's blood in
23 that car from an injury to his left hand, you know that's where
24 his left hand was. And regardless of anything else, we know
25 that his hand was reaching inside the car when he was shot. So

1 they have to attack that evidence. They do it with
2 Dr. Firestone who doesn't know anything about it -- he didn't
3 look at it. So they try to do it through eight-hour
4 cross-examination of Mr. Jason.

5 And the one thing they come up with is the napkin
6 issue. They don't give you any answers about what that means,
7 but they come up with the napkin issue again and again and
8 again and again. Mr. Jason says the napkin had to be from
9 something else. It was tucked in behind. It couldn't have
10 been from whatever the event was that caused the blood in front
11 of the seat. So what? What do we do with that?

12 The plaintiffs would suggest, throw the baby out with
13 the bath water. If the napkin was from some other event, maybe
14 the Oakland incident, he had cuts and scrapes, but if that's
15 from some other event, this blood on the front of the seat,
16 that has to be from something else too. Not so. Not so. The
17 reason for that is, that you have the high velocity impact
18 spatter. You have the blood exactly consistent with where the
19 left hand was located by eyewitnesses, and by Dr. Smith, and
20 with respect to Dr. Bonnell's analysis. And what are they
21 suggesting happened to create that blood?

22 Real briefly. What are they suggesting as an
23 explanation that created the blood in the same area where the
24 left hand would have been when it was shot? Are they saying --
25 I guess Mr. Galipo suggested, well, maybe he was shot with the

1 bullets, you know, that were fired earlier. Maybe -- what else
2 do we know about Pierce and Turk? Maybe that bullet hit him.
3 We know that's not true. Then what hit him? Well, his left
4 hand got shot earlier. Did his hand get shot twice? Because
5 we know his hand got shot when the bullet went through his left
6 leg and through his left hand. Did he get shot twice in the
7 hand? You have to have a blood-producing event to create high
8 velocity impact spatter to create blood in that area.

9 They say what is the cause or source of that blood
10 other than the explanation Mr. Jason had. There is really no
11 other explanation. Someone else had their hand in the location
12 that was shot? And left a trail of contact blood? They're
13 saying he had a bloody shoulder, got left down there and left
14 high velocity impact spatter? If you examine their questions
15 to the logical conclusion, they make no sense. They're just
16 questions. Mr. Jason explained this is all consistent with the
17 physical location that an individual would be reaching to the
18 left under the front of the seat. And the blood evidence is
19 significant in that respect.

20 He also testified he was first shot in the left leg
21 and the left hand.

22 Now, again talking about plaintiffs' attacks on
23 Mr. Jason, they knocked his diagram because they got an earlier
24 version of it. That's irrelevant. They had -- recounted
25 earlier witnesses' testimony. That's what Mr. Galipo said in

1 his closing remarks. That's not the case. Mr. Jason explained
2 when he was looking at this event he didn't discount testimony,
3 he just looked at the physical evidence to see from that if he
4 could reconstruct what happened. And he was able to. And as
5 it turns out, that matches the testimony of every credible
6 witness in this case. Every one of them.

7 The other knock on Mr. Jason, that only he could see
8 the high velocity impact spatter. Well, their expert didn't
9 even try. He just looked at photographs. Mr. Jason took high
10 resolution, high intensity photographs to show those to you,
11 and it was clearly visible on his photographs. And what's
12 their explanation of how it got there? I don't know, I guess
13 Mr. Jason planted that. Maybe that's part of the conspiracy.

14 Now, this was an issue that was raised quite a bit by
15 plaintiffs' counsel. That here we've got -- and he said in
16 closing, this is the smoking gun, for lack of a better term.
17 Here's this photograph that shows the door at 55 degrees. This
18 is really important. Because if that's the angle of the door,
19 then of course Officer Paine couldn't have been where he said
20 he was, and that means Mr. Boyd wasn't in the car.

21 Let's go back a second. Listen. Think about what
22 he's talking about. That picture was taken by Inspector Gee
23 after the door had been opened and closed. That wasn't
24 intended and didn't represent the position of the door at the
25 time the shots were fired. There's no evidence it did.

1 Mr. Galipo can try to run with that and say, Aha, this
2 means he couldn't have been seated in the door. No, at best
3 maybe it means the door was fully open. Kind of the way most
4 people would get out of the car. Kind of the way most people
5 would leave the door open after they got out of the car. And
6 it fits precisely with the wound paths and the wound
7 trajectories. As explained by Mr. Jason, he said the door's
8 fully opened or if it's at 55 degrees, if it's fully opened,
9 look at how that relates to every witness's testimony?

10 Officer Warnke is standing in the position essentially
11 where the door's pointed with the door between him and
12 Mr. Boyd. Officer Paine has a clear view into the SUV and his
13 trajectories match the trajectories of the wound paths to
14 Mr. Boyd. Officer O'Malley has a clear view into the SUV.
15 What does plaintiffs' counsel suggest you'd have to do to make
16 that so it doesn't work? Close the door. Doesn't make any
17 sense. That's not the way you try to figure out what happened
18 is to come up with some explanation that makes it impossible.
19 We need to know -- Mr. Jason testified as to the 55 degrees,
20 that might still be the case. But you don't work backwards
21 from a photograph that has no foundation as the angle of the
22 door. And that's what plaintiffs' counsel's suggesting.

23 Mr. Galipo's cross-examination of Mr. Jason suggests
24 that the thigh wound location is somewhere different than
25 described by Dr. Bonnell and Dr. Smith and Mr. Jason. There's

1 absolutely no foundation for that other than Mr. Galipo's
2 questions. Which as I pointed out, his questions are not
3 evidence and they were refuted by everyone. This is a downward
4 trajectory with the exit wound lower than the entrance wound.

5 So Mr. Jason, did he help to prove the plaintiffs'
6 case? No.

7 Now, that's the analysis of my analysis of the
8 evidence that was presented in this case as of this critical
9 issue. And let's look at it all together and see how it mounts
10 up the plaintiffs in terms of their ability to prove this,
11 which they have the burden, versus the defendants. This will
12 be the "yes" side. We'll fill this up with all the evidence
13 plaintiffs have to support their burden in this case, and that
14 is they proved that Boyd was not moving his hand into the SUV.
15 So we'll fill that up with all the evidence.

16 That's done.

17 Now we'll fill it up with all the defendants'
18 evidence.

19 That's the way this case presented. That is
20 overwhelming. Mr. Galipo talked about this being a difficult
21 case. It's far from just difficult. The only way he can
22 convince you of anything other than this is to have you
23 disregard the evidence, not pay attention, and turn off your
24 common sense.

25 So with respect to Question Number 1, which is really

1 the whole question in this case, all the facts regarding
2 Question Number 1, that relates to whether plaintiffs can prove
3 that Boyd was not moving his hands into the SUV when Officer
4 Paine fired. The answer to that question is clearly, no. They
5 cannot prove that.

6 So going back to the verdict form, if you remember
7 awhile ago I showed you what that looked like and how it will
8 look, how it will look to you in the jury room. This is the
9 exact language, I've read it to you before. This is a question
10 you'll have to answer as to Officer Paine, and this is what I
11 suggest -- and Officer O'Malley -- this is what I suggest
12 should be the response.

13 Now I mentioned before briefly that in this case there
14 are a lot of facts and issues that came up that I didn't
15 discuss that fit either side of that analysis and that happens
16 in every trial. And in this trial there are a bunch. And
17 these are red herrings, and I think everyone knows what a red
18 herring is meant to indicate, but something to distract you
19 from the main focus that takes you off the trail and look at
20 something else, and perhaps you get confused and come up with a
21 wrong result. That's what a red herring is.

22 Let me talk about some of those with you for awhile.
23 Number 1, Mr. Boyd had prosthetic legs, and getting down for
24 him would not have been as easy as other individuals. It does
25 not matter. It's irrelevant. Why did we call an expert to

1 testify about that? Because we knew they'd raise the issue and
2 we knew you'd want to hear someone talk about that issue. And,
3 yes, of course, someone getting down on the ground, they could
4 fall. In this case, Mr. Boyd could kneel. He could put his
5 hand up against something that doesn't look like he's reaching
6 for a gun.

7 But the evidence is what he did not have to do is go
8 back to that SUV and put his hands inside the vehicle, which
9 would look like he's reaching for a weapon. But the reach,
10 it's a red herring, because even if he had to, it doesn't
11 matter. Because the question is, How does it appear to the
12 officer is? When they're there and they're confronting an
13 individual who's tried to murder police officers using his gun,
14 they believe the gun's in the car, and that person for whatever
15 reason goes back and puts their hand in the SUV, even if in
16 their mind they're doing it for completely innocent reasons,
17 that doesn't matter. They can't be given that chance. That's
18 why that's a red herring.

19 Whether Officer Paine was in the parking stall or on
20 the sidewalk, irrelevant. Does not matter. Officer Paine says
21 he was on the sidewalk. According to the analysis done by
22 Mr. Jason, the wound paths, everything still works the same.
23 Even if he is as close as 12 feet away. The angle then would
24 be 10 degrees, instead of 6 1/2. If he's back 24 feet on the
25 sidewalk, it doesn't matter. A red herring designed to

1 distract you from what really matters in this case.

2 Officer Paine did not have cover. Through Mr. Cameron
3 explained why that is not the issue, it does not matter.

4 No shell casings were found in the parking stall. So
5 what? What are you supposed to do with that? Does that mean
6 Officer Paine didn't fire? Does it mean he wasn't anywhere in
7 that location? Mr. Jason, the only expert that testified about
8 shell casings and what they might mean, said, No, where the
9 shell casings are located is completely consistent with where
10 he was, Officer Paine's location as I described.

11 Did you hear testimony from anyone else that that's
12 not true? If it wasn't true, don't you think they would have
13 brought someone in? Shell casing expert? Or maybe had
14 Dr. Firestone. He's willing to lend expertise to just about
15 anything. He can say, Yeah, I'm a shell casing guy too, and,
16 no, those don't match. This was all done through the testimony
17 of Mr. Jason and his testimony was, it's consistent. That's a
18 red herring.

19 The do-rag. I still don't know why this issue has
20 come up so much and why you've heard about the do-rag again and
21 again and again. What relevance does that have, if at all,
22 with whether Mr. Boyd was reaching into the car or moving into
23 the car at the moment he was shot? It does not.

24 The white t-shirt. Again, a red herring. What does
25 it matter what happened to the white t-shirt? What bearing

1 would that have on any fact you need to resolve in this case?

2 Mr. Campos did not see Officer Paine or Officer
3 O'Malley. Well, we showed what his view would be. When
4 Mr. Campos is looking out his window, they'd be right
5 underneath him. And he'd be looking at of course what's
6 happening in the SUV. It's completely irrelevant. Does that
7 mean that Officer Paine and Officer O'Malley weren't there?
8 No, it means that Mr. Campos's attention was focused on the
9 SUV. As he described. A complete red herring.

10 Another one that Mr. Galipo focused on quite a bit in
11 his closing remarks, and that is Mr. Campos could see both of
12 Mr. Boyd's hands when he was shot. Well, he's on the third
13 floor. And the test as to whether you can use lethal force and
14 whether there's an imminent threat doesn't depend on whether
15 the officer can see the individual's hands. If the individual
16 is making a motion that the officer believes is consistent with
17 going for a gun, the officers entitled to use lethal force,
18 especially when you have someone who's fired at police officers
19 before. The officer can't allow them to do that or they're
20 risking their life, and the lives of their partner and everyone
21 else around them.

22 No one saw the gun until immediately after the
23 shooting in the map pocket. A complete red herring. So what?
24 Does that mean Mr. Boyd was not reaching into the vehicle? No,
25 it means the officers didn't notice it at that time. And if

1 they had, this would be different. Because if they saw where
2 that gun was and they saw Mr. Boyd go back to the SUV, seeing
3 the gun in this location, it's even more of a threat if they
4 saw it. Imagine that. He's out of the car, he walks back.
5 And his right hand is going to be inches away from this weapon.
6 The danger that these officers were in, now using 20/20
7 hindsight, the danger they were actually in from Mr. Boyd
8 killing them with that weapon is frightening.

9 And the plaintiffs claim is, Well, but he's reaching
10 to the left and not the right. So officers shouldn't have been
11 concerned? Well, thank goodness, he was just reaching to the
12 left and he didn't know where his gun was at that time.

13 Now, one of the suggestions is, well, why is he
14 reaching to the left if his gun is in the map pocket? Here's a
15 possible scenario. He's driving erratically through
16 San Francisco. He's on drugs, which we know. He's involved in
17 a high-speed pursuit. He shoots at police officers that are
18 pursuing him, and then when he is getting to Larch, he's got to
19 do something with his gun. He puts it down. Does he remember
20 whether he put it under the seat?

21 This is a rental car. It's not his. He's not very
22 familiar with where things are. He puts it to the side, it
23 goes in the map pocket perhaps, and then when he gets out, he
24 opens the door, and now he wants to find his gun, and he's
25 going back and he's looking for it, he doesn't recognize that

1 as his gun (indicating) perhaps or he doesn't see it, just like
2 the other officers don't at twilight on May 5th, 2004. And he
3 starts looking for it. Because he wants to bring it to bay on
4 the officers as he'd done earlier that day. Two minutes
5 earlier.

6 Mr. Campos talks about him looking to his left like
7 he's looking for something. He reaches to his left like he's
8 going for something. Then he puts his hands to his left again
9 like he's searching for something. I'd submit he was searching
10 for that gun. And under the seat you'll see, there's
11 photographs of black metal objects. Maybe he thought that was
12 it. Maybe he was reaching for one of those. Who knows? But
13 from the officers' perspective, it does not matter. So no one
14 saw the gun in the map pocket until immediately after the
15 shooting? Not relevant.

16 Did the officers describe every detail exactly the
17 same? No, they don't. And you wouldn't expect them to.

18 Officer Paine came in here, and if there was this
19 grand conspiracy about how everyone was situated and what he
20 was going to say, Officer Paine said, You know, I don't really
21 know whether he was seated or leaning or not. Why would he say
22 that? Because that's the truth. You know, recalling this
23 dramatic event, that detail isn't fresh in his mind. The
24 reaching is. His life being in danger is. But that detail is
25 not. Does that matter? That's a red herring.

1 And think for a minute, if you would, about the
2 differences in the Larch Way witnesses that the plaintiffs are
3 asking you to completely discount. We have hands up, never
4 moved. We have sitting down in the SUV. We have leaning to
5 the left. We have bending over with a back to the officers,
6 hands in. People that are seeing these events even when
7 they're honestly trying to recount them are going to have some
8 differences in how they describe them.

9 The critical issue is the move into the vehicle with
10 the hands, and on that every officer is consistent; on that
11 every witness on Larch Way is consistent.

12 The condition of Boyd's body and his legs after he was
13 pulled from the car. It does not matter. He was moved. Just
14 like the 55-degree angle of the door after the door was closed.
15 Why would you focus on that? It doesn't have any bearing
16 because it was moved after the shots were fired. You can't do
17 any analysis from that.

18 The location of the gun when Mr. Boyd was reaching.
19 We discussed that.

20 Mr. Boyd took his shirt off. It may be an indication
21 he's taunting the officers with his hands to his waist. But it
22 doesn't have anything to do with whether he reached into the
23 vehicle or moved his hands into the vehicle.

24 Boyd had his hands up some of the time. Well, you
25 heard Mr. Galipo recounting his view that Mr. Boyd is

1 compliant. He leaves out a whole lot. He's ordered to get out
2 of the car. He got out of the car. Well, that's after they
3 shot at the car. He's out of the car, he puts his hands up.
4 But he puts them down and he puts them to his waist. He leaves
5 that out. He says, all right, then they order him to get on
6 the ground, and then he doesn't. Okay, then that's not that
7 big a deal because he has prosthetic legs. That's a huge deal.
8 If you have officers with their guns trained on you, your life
9 is in jeopardy if you don't comply, and you're ordered to get
10 on the ground, you get on the ground. It doesn't matter if you
11 get a scraped elbow or a scraped chin because if you don't, you
12 know you might get shot. Because of what you've done to
13 provoke the incident. You get on the ground.

14 The blood on the napkin, we've talked about that.

15 The officers were yelling commands at the same time.
16 Well, of course they were. They wanted to get Mr. Boyd to
17 comply. They wanted to get him to comply with voice commands
18 because they didn't want to have to resort to their weapons.

19 You can't get under the seat from the side. No one
20 says you could. It's completely irrelevant.

21 Officer Paine and O'Malley saw Elieff before the
22 shooting. Apparently that's not being raised anymore as part
23 of the conspiracy. I don't know. There were questions to them
24 about, Well, didn't you see Officer Elieff on a tow before this
25 happened? What is that about? Unless they're saying they were

1 all in cahoots ahead of time to stage this execution.

2 Apparently that theory's dropped out. But that's completely
3 irrelevant.

4 Another question: The defense did not test every
5 piece of evidence or everything imaginable.

6 Of course not. Who can? Does it matter? I mean,
7 with respect to the fiber evidence, we have fibers from the
8 pants, the jeans, the jeans seam, the boxer shorts, both in
9 terms of the polyester and the color, and the bullet in the
10 left hand. Does it matter that we don't also have other fibers
11 located in the fiber analysis in the bullet in the left hand?
12 Of course not.

13 We talked about this, that no one knew that Mr. Boyd
14 was alone until the car was cleared at the end. That's
15 irrelevant.

16 The SUV could have crashed if Officer Paine's shot at
17 Pierce and Turk hit Mr. Boyd. That was discussed. That's not
18 to be considered. And as I pointed out, the plaintiffs are no
19 longer even making a claim regarding the shot at Pierce and
20 Turk as being the use of force, and you'll hear instructions as
21 to why that is, because in a high speed pursuit, if an officer
22 believes that that pursuit continues and that it may cause
23 someone to lose their life, a bystander die as a result, the
24 officer is allowed to use lethal force to stop that pursuit.

25 That was Mr. Cameron's testimony. That would be an

1 instruction you'll receive. In addition, you'll receive an
2 instruction that an officer has a felon that is fleeing, and if
3 allowing that individual to escape will pose a threat to future
4 individuals, the officer can use lethal force to stop that
5 individual. That's the fleeing felon rule. That also applies
6 to Officer Paine's shot at Pierce and Turk. That's why that's
7 not in the case anymore.

8 Did Officer Paine actually see Mr. Boyd shooting from
9 his vehicle? That's irrelevant because he's allowed to rely on
10 the information he obtains from the police radio.

11 Did Officer Paine announce his shot at Pierce and
12 Turk? That's irrelevant. Tactics and decisions don't matter.
13 They're not -- their claim isn't based on the shot at Pierce
14 and Turk anyway. And Mr. Cameron explained to you why that's
15 completely appropriate police behavior.

16 So those are the red herrings that relate to that
17 first issue and the most important issue in this case, and that
18 is whether the time the shots were fired, was Mr. Boyd moving
19 his hands into the vehicle? All of the red herrings, those are
20 all irrelevant pieces of information, although they came up at
21 the trial, they don't relate to how you analyze that question.

22 Now, one individual we've not talked about, and I'm
23 getting close to being done, is Officer O'Malley. You might be
24 wondering, why is he a defendant in this case? He's wondering
25 the same thing. In order to maintain a claim against Officer

1 O'Malley, here's what they have to prove: That he used
2 unreasonable force. All right. First thing they have to prove
3 is, did they prove that Boyd would not be a danger to others if
4 he escaped on Larch? That is the fleeing felon rule, because
5 that's when Officer O'Malley fired his shot. If at the time he
6 fired that shot, and it's virtually undisputed the car was
7 moving when he fired that shot, if he allowed him to escape,
8 would he be a danger to others? Unquestionably, he would be.

9 The next issue is, all right, even if the fleeing
10 felon rule doesn't apply, Officer O'Malley is still allowed to
11 fire his weapon at Mr. Boyd if he believes, reasonably believes
12 Boyd had access to a gun in his car. Remember Officer
13 O'Malley's testimony. The car came to Larch and it was
14 stopped. He came up. He saw Mr. Boyd. He ordered him to put
15 his hands up. Mr. Boyd didn't comply. Looked in the mirror.
16 Then looked at Officer O'Malley. Began to drive forward.

17 Under those factual scenarios, as Mr. Cameron
18 explained, that officer is allowed to and should use lethal
19 force to stop that individual. With the understanding that
20 that individual had fired at police before, and this
21 individual, by moving his vehicle, would be considered a
22 fleeing felon. Doesn't matter what the speed is.

23 So what's the evidence that they presented related to
24 whether Boyd would be a danger to others if he escaped? As to
25 Officer O'Malley. Mr. Clark testified about that a little bit.

1 Do you remember what he said about the shot that Officer Paine
2 took at Pierce and Turk? He said, Well, wait a second, okay,
3 he might be fleeing, the car's going 60 miles an hour, so don't
4 shoot at him, that's too dangerous. Going too fast to shoot.
5 Going 60 miles an hour. Don't shoot at the driver of that
6 vehicle. Too dangerous.

7 Then he says, Okay, got the same vehicle, now he's on
8 Larch. And now he's moving forward slowly. And Mr. Clark
9 says, Oh, don't shoot now. He's going too slow to shoot.
10 Don't shoot at the driver.

11 I'd suggest that that's sort of like the three bears.
12 That the first one's too little, the second one's too big, and
13 so you have to wait until the vehicle's going just right before
14 you can shoot. Of course that's not the law. Of course that's
15 not the standard. Mr. Cameron explained that to you.

16 So did Mr. Clark support this proposition? No, he
17 doesn't.

18 So that's really the only evidence they offer.
19 There's no credible evidence that Officer O'Malley's shot was
20 unreasonable.

21 Other evidence that relates to whether if Boyd escaped
22 he would be a danger to others. We know from the radio
23 dispatch that that would be true. We know from Officer Paine's
24 testimony that would be the case. Mr. Cameron's testimony.
25 Common sense. And we know that from Officer O'Malley's

1 perspective, when that vehicle started to move forward, he had
2 to reasonably believe that he was trying to escape Larch. And
3 if he's allowed to do so, he will create a greater danger and
4 threat to the lives of people in San Francisco. And so his
5 obligation as a police officer is to stop that threat if he
6 could. That's why he took a shot.

7 Now, in terms of whether or not the vehicle was moving
8 at the time the shot was fired, Mr. Harris says it was moving.
9 And I'm talking about it was stopped, and it started moving
10 again. Mr. Rogers also testified the vehicle stopped and
11 started to move again before that shot was fired.

12 Ms. Cranshaw, she testified the vehicle was stopped
13 and started to move again when the shot was fired by Officer
14 O'Malley. Officer O'Malley, of course, testified to that.
15 Mr. Jason established through his analysis in Exhibit F-9,
16 which is in evidence, that the vehicle had to have moved when
17 Officer O'Malley fired his shot. And the reason for that is
18 because of the trajectory of Officer O'Malley's shot, lands
19 here (indicating). That means Officer O'Malley would have been
20 in this location and the vehicle could not have been here. It
21 had to be further back, which means that it moved.

22 Now, the next question related to Officer O'Malley is,
23 did plaintiffs prove that -- oh, we answered this question.
24 This is the end of that question, did plaintiffs prove that
25 Boyd would not endanger others' lives if he escaped? I submit

1 the answer to that is, No. There's no evidence to support
2 plaintiffs' claim.

3 The next issue is, did they prove that it would be
4 unreasonable for O'Malley to believe that Boyd had access to a
5 gun? We talked about that in some detail. There's no credible
6 evidence to support it. And the radio dispatch, Officer
7 O'Malley, Officer Cameron, established that of course it would
8 be reasonable to believe he had access to a gun.

9 So with respect to Officer O'Malley's issues, what are
10 the red herrings? Officer O'Malley did not announce his shot
11 before or after on Larch. Mr. Cameron explained that's
12 ridiculous. That's not what police officers do. It does not
13 matter.

14 Officer O'Malley's shot on Larch could have hit
15 someone other than Boyd. You remember the analysis in this
16 case has to do with the use of force as to Mr. Boyd and
17 Mr. Boyd alone. So this is irrelevant.

18 Officer Paine's car may have partially blocked
19 Mr. Boyd's exit. Also irrelevant. Mr. Cameron explained that
20 a vehicle like this you cannot count on the fact that a
21 vehicle, even if it's stopped at the exit, would stop an SUV if
22 that driver wanted to leave.

23 Other officers fired at Boyd's car thinking Officer
24 O'Malley's shot was from Boyd. That also, as I explained
25 through Mr. Cameron, is irrelevant. You evaluate Officer

1 O'Malley's shot based on what he knew at the time. Not based
2 on any actions taken by anyone else afterwards. For the
3 example talking about 20/20 hindsight. Talking about Officer
4 O'Malley's shot. Did he see a threat from Boyd? I believe
5 there's no evidence to suggest otherwise.

6 Boyd was driving slowly when Officer O'Malley shot.
7 Irrelevant. Does that mean that you're driving slowly, you
8 can't shoot because there's a rule under five miles an hour
9 you're not fleeing? Just needs to step on the gas more? Or
10 maybe he was about to. Officer O'Malley appropriately took
11 that opportunity to try to stop this very dangerous threat.

12 The pursuit would eventually end. That's what
13 Mr. Clark told you. You don't need to shoot at him. Don't
14 shoot at him at Pierce and Turk. Don't shoot at him on Larch,
15 because eventually it's going to end. Maybe he'll run out of
16 gas, maybe he'll run out of bullets. But at what cost to the
17 people of San Francisco if the officers don't do something to
18 stop Mr. Boyd.

19 As I was discussing this, I thought of one other red
20 herring I didn't mention in terms of Officer Paine's shot, and
21 that came up a bit and that is, plaintiffs argue that, well,
22 Officer Paine was the only one that shot at Mr. Boyd. They
23 have the other officers there, saw the same things, they didn't
24 shoot. Doesn't that mean Officer Paine is unreasonable? Of
25 course it doesn't.

1 First, someone's going to shoot first. Second, you
2 don't evaluate a decision to shoot as to whether other officers
3 did or didn't. If that was the case, no officer can make that
4 decision on their own. They'd have to say, Okay, Officer
5 O'Malley, I think I'm going -- I'm about to take a shoot.
6 Okay, one, two, three, let's go. You can't have officers
7 function as police offices if that's the standard.

8 And also you're talking about different officers
9 perceiving different things from different locations. Some
10 have cover. Officer Paine does not. The threat is right in
11 front of him. He probably has the best view of the officers.
12 And you need to consider these officers all have different
13 levels of experience.

14 You heard Officer Elieff testify. He was five months
15 out of probation. Expecting him to have the same response time
16 as Officer Paine is unrealistic. And it's completely
17 inappropriate, as you'll be instructed, to be evaluating that
18 decision based on whether other officers did or did not make
19 the decision at the same time.

20 You did hear from officers that said they were about
21 to shoot. They were about to shoot. Officer Warnke said, I
22 was going to shoot; Officer Paine fired first. Plaintiffs will
23 have you think, well, that means there must be something wrong
24 with what Officer Paine did. But just imagine if it was the
25 other way around. Imagine if at the same moment that Officer

1 Paine fired, all the other officers also fired and shot
2 Mr. Boyd. Do you think the plaintiffs would be in here saying,
3 Okay, he was shot 15 times, but that's not excessive because
4 they all shot at the same time, they must have perceived the
5 threat at the same time? Of course not. This case needs to be
6 analyzed from Officer Paine's perspective and a reasonable
7 officer in his perspective and what the threat level was.

8 There's one -- this is the answer I would suggest as
9 to the question of -- as to Officer O'Malley. We already
10 talked about the issue with respect to Officer Paine. And I'd
11 submit the answer for Officer O'Malley is clearly no.

12 And also this next issue: Mr. Galipo suggested there
13 was no dispute in this case regarding causation. Well, that's
14 not quite true. Because Officer O'Malley's still in this case.
15 There is no evidence that Officer O'Malley's shot struck
16 Mr. Boyd. So what is the claim against him? What are they
17 saying that he did? Even if, let's say, even assuming that
18 there was an unreasonable shot for him to take, it didn't cause
19 any damage. It didn't cause any harm.

20 Well, this is where their claim gets really bizarre.
21 They're claim in this case is, All right, we accept that, his
22 shot didn't cause any harm. But their argument is, Officer
23 O'Malley's shot caused Officer Paine to shoot. That is what
24 they're saying. There's absolutely no evidence to support
25 that. After Officer Paine, Officer O'Malley fired his shot.

1 Mr. Boyd is out of the car. No other officers fired after he's
2 out of the car. Until Officer Paine did. He was walking
3 around, he went back to the door. Then Officer Paine arrived
4 on the scene. Officer Paine didn't say, When I got there, I
5 just started blasting away because I heard shots. He didn't
6 say anything like that at all. He said the reason he shot, and
7 the evidence is, because he saw Mr. Boyd make a move into the
8 vehicle with his hands. It has absolutely no bearing and no
9 relation to Officer O'Malley's shot.

10 So you'll be asked this question about Officer
11 O'Malley, and this is Question Number 2 that relates to
12 causation, and I would submit we didn't even get there because
13 the previous answer here will have you stop on the verdict
14 form. Once you complete this, you won't have to answer any
15 further questions. You sign the verdict form and you return
16 it. You won't get to the causation issue if that's what you
17 find.

18 So I know that is a lot of evidence. It's been a long
19 case. And I have a few more comments, but there's one bit of
20 evidence I'd like to discuss with you, and -- before I'm done
21 talking about the evidence, and that is, you've heard a lot of
22 testimony from witnesses about what they saw and what happened,
23 and you've heard a lot of evidence about testimony, physical
24 evidence and what this means. But there's one bit of evidence
25 that is so critical and defines this moment and the level of

1 threat so specifically that none other can match it. And
2 you've heard it in the opening. And you've heard it when
3 Officer Elieff testified. And that is the dispatch tape.

4 Now, I was debating whether I would play it for you
5 again, and then I stood back and I thought, Wait a second, this
6 is evidence of the contemporaneous comments and actions by the
7 situation that Mr. Boyd created. They're alleging that the gun
8 was planted, that apparently shots weren't fired, that I guess
9 that Officer Elieff imagined what was happening. I have to
10 play this again. There is no bit of evidence more powerful and
11 more compelling than the dispatch tape.

12 So with that, I'd ask you to listen once again to the
13 dispatch tape, which before I play it, will be in evidence.
14 And you can listen to it as much as you'd like. And one of the
15 things that you can listen for is the sound of the gunshot
16 before you hear Officer O'Malley (sic) say, "Shots fired, shots
17 fired, he shot at me." Listen for the sound of a crack just
18 before he makes that comment. And Mr. Jason said he could hear
19 it, and I believe that you will as well. But that's something
20 you might want to pay attention to, and you might want to
21 rewind it a couple of times to listen for that sound.

22 (Audiotape played)

23 MR. LOEBS: Can you pause it? It's been a long trial,
24 and I may have misused names here and there. It's an awful lot
25 of facts to keep straight. Mr. Wiener advised me that I had

Summation - Loebs

1 mentioned that Officer O'Malley was the one that said shots
2 fired. Of course, that's not what I meant. It's Officer
3 Elieff. And thank you for bringing that to my attention.

4 Now I can play it, I think, by hand.

5 (Audiotape played)

6 MR. LOEBS: I just have a few more comments. I'm not
7 going to be directing those comments toward the specific
8 evidence right now. I talked before about the burden of proof
9 and if you understood that plaintiffs have it, defendants
10 don't. That's why the plaintiffs get to go first. They need
11 to prove their case. They need to put on the evidence that
12 establishes that the use of force in this case was
13 unreasonable. They get all sorts of advantages in the case.
14 They get to call the witnesses first. They get to --
15 plaintiffs get to go first in opening statement. They get to
16 go first in closing argument, and plaintiffs get to go last.
17 In other words, plaintiffs' counsel will have the last word.

18 And I am sure that Mr. Galipo will bring up things
19 that he didn't mention in his opening that he could have -- his
20 closing remarks that he could have, that I won't have the
21 opportunity to address. And when that happens, you have to ask
22 yourself, I wonder why he's bringing that up now? Didn't he
23 want the defense to have a chance to response to what his
24 comments were?

25 And I'll ask you, when you hear his remarks, to think

1 to yourself, if you could, What would the defendants say if
2 they had a chance to respond to his remarks? Because they will
3 go unanswered. When I'm done in just a couple of moments, I
4 won't have another chance to address you.

5 So you can keep that in mind.

6 I would like to make sure that on behalf of Officer
7 Paine, Officer O'Malley, Erin Bernstein, Scott Wiener, and all
8 of the people that worked on this case with respect to the
9 defendants, thank you for the time and attention you have given
10 to this case. It has been a long case. A lot of the testimony
11 has maybe not been as tasking as others. And we respect the
12 jury process, and it can't work without people such as
13 yourselves that are willing to give up huge portions of your
14 life to come and listen to the evidence and make your
15 evaluation based on what you think is correct. And it's
16 enormously important, and regardless of the verdict that you
17 reach, everyone with respect to the defendants appreciates the
18 time and the effort you put in in this case.

19 Now, two more things that I'd like to talk about
20 before I'm completely done. One of the -- as Her Honor has
21 pointed out several times, it's never appropriate for defense
22 counsel to address plaintiffs' counsel and ask them questions
23 or respond to them during the trial in any way. And there are
24 many things, many questions that come up in this trial that if
25 I could have asked, I would have. And I was thinking in

1 preparing this case and my closing remarks there may be some
2 questions that you have that you might -- because you're not
3 also asking questions of counsel. There are some things in the
4 case as they presented it that don't make sense that may not
5 relate to all the critical issues in the case, but it would be
6 nice to have some answer to.

7 And what I have done is I have prepared a list of a
8 few questions, hoping that plaintiffs' counsel could take some
9 time in his rebuttal remarks, the opportunity to address. I'm
10 sure that he won't. I'm sure he'll take these questions and
11 he'll put them aside, and when he does that, just ask yourself,
12 Boy, weren't those important questions, or doesn't that matter?
13 Why is he not addressing those? He won't. I'm sure he won't.
14 But here's mine.

15 I'll go through these fairly quickly. First, do
16 plaintiffs really think that we the jury were paying so little
17 attention to the evidence that plaintiffs could refer
18 repeatedly to Boyd pointing a gun at Hogan's face and
19 repeatedly threatening to kill her as an innocent car trade?

20 Second, given the testimony of Natasha Gatto, Tatanika
21 Hogan, Tiffany Williams, Officer Elieff, Jonas Mason and
22 Inspector Gee, and the ballistics match on the gun in Boyd's
23 car, how can plaintiffs argue with a straight face that the gun
24 was planted?

25 Number 3, shouldn't we think it's outrageous that

1 Marylon Boyd went to Joe Campos's home and attempted to get him
2 not to testify? Why shouldn't we believe that she also could
3 influence other witnesses?

4 Number 4, how can we believe anything Marc Firestone
5 says given he formed his opinions before he even looked at any
6 photographs and given that he never looked at any physical
7 evidence and never inspected the SUV and never went to Larch
8 Way?

9 Number 5, didn't Dr. Bonnell, who's hired by
10 plaintiffs, completely support defendants? Is that why
11 plaintiffs didn't even mention his name in their closing?

12 Number 6, do you really expect the jury to believe
13 anything that Otis Harris said?

14 Number 7, why did Mr. Galipo say in his opening that
15 16 witnesses would tell the jury that Boyd had his hands up and
16 that no officers would say they saw him seated?

17 Number 8, if we believe any of the following
18 witnesses, shouldn't we find for the defendants? That would be
19 Officer Paine, Sergeant O'Malley, Officer Stearns, Officer
20 Elieff, Officer Warnke, Dr. Smith, Mr. Campos, Miss Wilson,
21 Mr. Jason.

22 And I should include in there as well, Mr. Ingram.

23 Now, I doubt he'll address these, but in case he wants
24 to, I'll leave them here for his use.

25 Now these truly are my final comments:

1 In plaintiffs' closing remarks, he suggested that your
2 verdict doesn't matter to these officers. Officer O'Malley was
3 promoted to sergeant. Their lives will go on. Your verdict is
4 intensely important to these officers. They are being accused
5 of certainly executing a man who had his hands up and was
6 surrendering. This is an intensely important case. And what
7 you say on this issue will affect them for the rest of their
8 lives --

9 MR. GALIPO: I'll object.

10 MR. LOEBS: -- despite Mr. Galipo's --

11 MR. GALIPO: There's no evidence of that at all, your
12 Honor.

13 THE COURT: I think the argument goes to mental state,
14 so to speak.

15 MR. LOEBS: Yes.

16 THE COURT: I'll overrule.

17 MR. LOEBS: Just the accusation alone is incredibly
18 significant for these officers. They've had to sit through
19 this entire trial, listening to things that Mr. Galipo said
20 about them. Listening to Mr. Clark say that they're immature.
21 Listening to witnesses, Mr. Otis Harris essentially saying that
22 Officer Paine executed someone with his hands up. They've had
23 to sit there patiently and listen to all that testimony. This
24 case has been going on for years. This happened May 5th, 2004.

25 And don't let Mr. Galipo tell you that it's not

1 appropriate to these officers and their families.

2 Based on the evidence that's been presented to you,
3 I'd suggest that there is only one verdict that you can reach
4 in this case. And that is completely exonerate these officers
5 as they were doing their duty, risking their lives, for the
6 citizens of San Francisco, and that they should be honored for
7 what they've done. Not persecuted. And that we should be
8 proud to have officers like them protecting all of us.

9 Thank you.

10 THE COURT: Thank you, Mr. Loebs. That concludes the
11 defendants' closing remarks.

12 Now, obviously, we'll need to take a break. And I
13 don't know whether you will be able to finish today,
14 Mr. Galipo, and if you are not able to, then we will conclude
15 on Monday with your remaining final remarks. We do need to
16 take a break now of some sort for the reporter. That's going
17 to take us to around, I'm just rounding it off at 3:20. And if
18 we do that, do you think you could conclude by somewhere in the
19 vicinity of 4:30, or do you feel that given everything and the
20 very long argument by Mr. Loebs that you will need more time?
21 And if you do, then I would probably break earlier than 4:30
22 because it's been a long day for the jury. Do you want to
23 think about it?

24 MR. GALIPO: Yeah, your Honor.

25 THE COURT: I'll leave that to you.

1 MR. GALIPO: What I would recommend is if I get to
2 4:00, and I think I could finish on or before 4:30, I'll keep
3 going. And if I feel it's just too much and I'm not going to
4 be able to do it, I'd rather just finish the first half hour or
5 so Monday morning.

6 THE COURT: Okay. All right. So ladies and
7 gentlemen, please take a break till 20 after. That's not a
8 full 15 minutes, but I'm trying to get us to move along here,
9 if we can. Thank you.

10 (The jury exited the courtroom)

11 (Afternoon recess)

12 (In open court; jury not present)

13 MR. GALIPO: My inclination, your Honor, is probably
14 around 4:00 or so, but let's see how it goes.

15 THE COURT: Okay.

16 (The jury entered the courtroom)

17 THE COURT: All right, ladies and gentlemen, thank
18 you. There's a good chance just from what Mr. Galipo has said
19 to me we probably won't conclude today, but he's going to look
20 for an appropriate place to break.

21 And, Miss Chan, are you able to get coverage for
22 Monday?

23 JUROR: Yes.

24 THE COURT: Thank you very much.

25 Mr. Galipo?

1 MR. GALIPO: Yes. Thank you.

2 Good afternoon, everybody. I told you it would be a
3 sad day for me. But I listened carefully, as you did. As you
4 can see, I don't have the dream team. I don't have all their
5 fancy blowups and diagrams, and I don't have experts that I
6 paid 50,000, \$40,000 to.

7 I also noticed I didn't have any people on my side at
8 the end. You had the left side and the right side, and it
9 seemed like everyone ended up on the other side. And I didn't
10 realize there were so many red herrings in the case.

11 But let me say this. I'm going to, first of all,
12 address all these issues, and I think if I dodged that, some of
13 you are going to wonder why I didn't. If I wait till Monday
14 morning, I might forget what they are if they're not right in
15 front of me.

16 I would like to do a few things today. There were
17 some representations that I misrepresented the testimony from
18 Tiffany Williams or Tatanika Hogan, and I found the cites for
19 that. As I said, whatever decision you make based on today, as
20 long as it's based on the law, on the evidence, I respect that.
21 But I'd be unhappy if you thought I tried to pull the wool over
22 your eyes as to what the evidence was or tried to misrepresent
23 the law to you, because that is in no way my purpose. I hope
24 you understand that.

25 There was also reference that I completely

1 misrepresented the testimony of Mr. Campos, and I went through
2 that again too. I don't know if I'm going to do that now. I
3 might do that first thing Monday morning. But I have the page
4 numbers in case any of you feel you need to re-reference that
5 during deliberations.

6 With respect to the law, without any disrespect to
7 Mr. Loeb, I think some of the comments he made about the law
8 that you're going to actually get and apply to this case is
9 different from what he says. He made certain suggestions.
10 You'll see in the instructions that the Judge is going to give
11 you that this is the law on that and that is the law on this,
12 and I hope you understand you have to go by the law that the
13 Judge gives you, because I or the other side can say this is
14 the law but it might not be. Or it might be our spin on what
15 we think the law is.

16 I would say this: That the suggestion that someone
17 should be proud or honored to shoot a disabled, unarmed man at
18 the time of his shooting I think is not what this case is
19 about. And I also believe still that what's important for your
20 evaluation is what Officer Paine knew and what happened from
21 his perspective. Including what he heard at the time on Larch
22 Way.

23 And there's been a big suggestion that the plaintiffs
24 are trying to mislead you and distract you, and think about how
25 much evidence was presented by the defendants on issues outside

1 of Larch Way. Think about how much of this six weeks was spent
2 on talking about stuff other than what happened on Larch Way.
3 And think about why. I rested my case in the third week.
4 We've now been here six weeks.

5 Who did they really add to the equation in their
6 defense? The only other police officer that I can think of,
7 and maybe I'm missing someone because I'm a little tired right
8 now, that witnessed the incident was Officer Elieff, that was
9 called in their defense. And that's an interesting thought
10 right there. Because we know that Officer Warnke came with
11 Officer Damato and Officer Ghiselli. They weren't called.

12 Think about it. If they had seen Mr. Boyd sitting or
13 reaching for a weapon, they were there, why wouldn't they be
14 called by the defense? They work for the police department.
15 They were present when it happened. Why? Is it maybe because
16 they saw him standing or saw something different? How about
17 Officer Caine? Why wasn't he called?

18 So when you think about the defense case, okay, you
19 have a chance to call all your officers now to say exactly what
20 happened, who did they call? You have now had the chance to
21 call all the percipient witnesses, and we know from the
22 evidence that so many were interviewed, we didn't want to make
23 it a 12-week trial for sure, but they called one, that I can
24 think of. Synell or Fatima Wilson.

25 And what is the real issue here? You know the Fourth

Summation - Galipo

1 Amendment says police officers cannot use unreasonable force.
2 And then they have special rules with deadly force. It's
3 unreasonable to use deadly force unless you're in immediate
4 fear of death yourself. But who decides that? As a society,
5 who decides that? Probably folks like you. Because we know
6 this is not a criminal case. We know there's no disciplinary
7 proceeding going on.

8 MR. LOEBS: Objection, your Honor -- forget it.

9 THE COURT: Pardon?

10 MR. LOEBS: Never mind.

11 THE COURT: All right. Okay. Go ahead.

12 MR. GALIPO: So what remedy would anyone have,
13 anybody, that had a loved one, anyone, shot and killed by the
14 police, other than to try to seek some justice or clarification
15 from a group of people to say, Look, police officers do have
16 tough jobs. No question about it. But sometimes someone may
17 overreact.

18 And there was a suggestion that Mr. Galipo's claiming
19 there's a major conspiracy. Well, I don't remember claiming
20 that. He's saying Officer Paine executed him. I don't
21 remember saying that. I think Officer Paine overreacted.

22 MR. LOEBS: Objection as to Mr. Galipo --

23 MR. GALIPO: I'll rephrase.

24 I know the evidence, one inference from the evidence
25 that you can apply is that Officer Paine overreacted. He's

1 human. Like anyone else. But if he did overreact, there's
2 nothing in the instructions that says plaintiffs had to prove
3 he had a bad intent or wanted to kill him or this is a murder
4 charge. It's -- all it says was the use of deadly force was
5 unreasonable, at that moment. And I want to try to hopefully
6 bring you back home to that thought.

7 Before I forget, there's so many things going through
8 my mind as I sat there and watched along with you -- any
9 attorney presenting a case to look back and say, Gee, how come
10 Dr. Firestone didn't have those photographs at the time, that
11 looks ridiculous, or whatever the case may be.

12 But we'll get to that. It's interesting that the main
13 piece of Mr. Jason's testimony is high velocity blood spatter,
14 which I have to tell you you don't need to be an expert or an
15 attorney or a doctor to say if you can't even see it on the
16 photograph, it's not there. I mean, you know, otherwise, they
17 would have had this up and said, See that cone pattern, you see
18 this fine mist, you see these 30 particles forming this -- it's
19 just not there. And if that's the whole basis -- and you heard
20 that they retained Mr. Jason in 2005 and Dr. Keram, how are the
21 plaintiffs going to compete with that without having some
22 experts to counter their experts? How am I not going to ask
23 questions to test the validity really of what they're saying?
24 How are you going to make an informed decision?

25 Now, maybe all my questions weren't the best in the

1 world. Some you might have thought, well, that's something to
2 think about. But I at least have to put that out there for you
3 so that you have both sides.

4 Let me try to answer these questions so no one here
5 thinks I'm dodging -- I don't want to say bullets. That would
6 be a bad term.

7 Number 5 -- I'll go in reverse -- didn't Dr. Bonnell,
8 who was hired by plaintiffs, completely support defendants? Is
9 that why plaintiffs didn't even mention his name in their
10 closing?

11 Well, I'll address both of those. First of all, I
12 didn't give a five hour closing, so I might not have mentioned
13 everyone's name, and if I didn't, I apologize for that.

14 Second of all, Dr. Bonnell did not completely support
15 the defendants. I mean, first of all, I wanted someone to
16 explain to you the basic wound evidence because up to that
17 time, where were the wounds, what was their trajectory, to get
18 an idea. But Dr. Bonnell clearly said that it could have
19 happened with him in a seated position, if he was turned
20 enough, etc., etc., trajectory-wise, and it could have happened
21 with him standing outside the car. He was given countless
22 hypotheticals, and of course Mr. Loebs was doing the ones he
23 wanted to do, and I was doing the ones I wanted to.

24 But Dr. Bonnell said first shot could have been to the
25 abdomen. Could have sustained the leg and the hand shot going

1 down. Dr. Smith said the same thing. Nobody got up here, even
2 Mr. Jason said that and said, with a hundred percent certainty,
3 this is the only way it could have happened.

4 One thing that wasn't addressed, interestingly, in the
5 closing by Mr. Loeb is the graze wound.

6 Now that's something for you to look at. I'm not a
7 medical doctor, but those pictures, one might think, you know,
8 look supportive of something that might -- a bullet might have
9 hit his head. I don't know. But why would Dr. Smith, a
10 trained medical doctor, write in his report after two months,
11 that wound is suggestive of a graze-type gunshot wound, and
12 then we come to court as if, well, I put that in there, but I
13 don't think it is one at all. That's not consistent. Why
14 would a medical doctor say something suggestive of something in
15 an official report, and then suggest in court that, I wrote
16 that, but I was thinking of something completely different?

17 Dr. Bonnell told us it was a graze wound. And now the
18 jury is supposed to take Mr. Jason's word on it who's not a
19 medical doctor at all? Who's not a forensic pathologist?
20 Because he says it's not a graze wound. We're supposed to
21 throw out everything the doctors say? Is that reasonable? You
22 have to decide.

23 Number 6. Do you really expect the jury to believe
24 anything that Otis Harris said?

25 Well, Otis Harris has bad. There's no question about

Summation - Galipo

1 it. Does that mean -- see, if Otis Harris was the only one
2 saying that he was outside the car, not inside, or his hands
3 were visible, or he wasn't reaching into the car, that might be
4 different. Someone could say, My God, 10 people came in here
5 and said -- and they're percipient witnesses, they're not
6 biased on the side of the police -- and they have this guy
7 reaching under the seat of the car, and here comes Otis Harris,
8 and he says something completely different, and then we find
9 out all this stuff about him. Well, then clearly you can say,
10 we can't believe this guy.

11 But it's for you to decide.

12 I think much of what he says makes sense.

13 MR. LOEBS: Objection, your Honor.

14 MR. GALIPO: I'll rephrase.

15 I think you can find that a lot of what he says makes
16 sense. Perhaps you might find he overdramatized and he
17 remembers things a certain way, that's fine.

18 I'll go to the next one. Why did Mr. Galipo say in
19 his opening statement that 16 witnesses would tell the jury
20 Boyd had his hands up?

21 Well, first of all, I can tell you I didn't say that.
22 If you want to get a copy of my opening statement, that's fine.
23 I never said that 16 witnesses are going to come in here and
24 tell you that Mr. Boyd had his hands up.

25 Next. If we believe any one of the following

1 witnesses, shouldn't we find for the defendants?

2 And before I address that point and these witnesses,
3 which I will very quickly or try to, let's think back to the
4 verdict form. Three questions. First question is -- and, by
5 the way, the oldest trick in the book is to put the verdict
6 form up and tell the jury how they should fill it out.

7 Here. Here's what you need to do, put "no" here and
8 "no" here, and then you can go home.

9 I'm not worried that the jury's going to deliberate in
10 that fashion.

11 The first question is, was the force used
12 unreasonable? And one of the things you really have to think
13 about here, this is deadly force. To kill someone. I mean you
14 can say it's to stop a threat. But when you're aiming center
15 mass at someone, I think it's pretty clear you're either going
16 to seriously injure them or kill them. And that's why the law
17 has such special requirements on deadly force. As opposed to
18 macing someone or using a Taser or hitting them with a baton or
19 whatever it might be. Deadly force has very, very special
20 requirements, and the requirement is, getting imminent or
21 immediate threat of death.

22 And obviously, one could think of many examples of
23 someone having a gun in their hands or pulling the gun out of
24 their waistband and you can see it. But even though we've
25 heard everything about reaching and turning and moving, the

1 law, when you really read it carefully, about an imminent
2 threat and when you use your common sense, I would hope that
3 your decision will be based on this:

4 If he looked like he was reaching for a weapon, then
5 the defendants should win. Movement of hands is not enough.
6 Everyone knows you have to move your hands to get down. We've
7 heard from the experts, even not obeying verbal commands is not
8 enough. Put your hands up. They don't put their hands up, you
9 can't shoot them. Get down on the ground. They don't get down
10 quickly, you can't shoot them. Even in this scenario. Even
11 based on everything that came in.

12 If you're going to judge the case, well, he moved a
13 little bit. If the officer could see his hands or could see
14 that his hands were going in an area, their whole case was
15 based on him reaching underneath the seat of the car. That is
16 the defense's whole case. They've got these fancy diagrams and
17 experts, and this is it. And I can assure that you that an
18 inference you can probably find from the evidence, it started
19 with the bloody napkin.

20 You might recall when you're talking about Mr. Jason's
21 first deposition, and this is after he'd been working on the
22 case for, you know, first deposition I think was May 8th -- I
23 know that because that's my birthday -- May 8th, 2007. And we
24 said, Well, remember in your first deposition, Mr. Jason, where
25 you thought that his hand was in contact with that bloody

Summation - Galipo

1 napkin underneath the seat, and that's how you were in part
2 saying that's where his hand had to be? Yes. And then we had
3 a lot of questions on it? Yes. And then you reconsidered it?
4 Yes, I changed my opinion. I looked at the napkin I considered
5 its location, the trajectory, the trajectory, the side of the
6 seat. The hand could not have been where the napkin was.

7 Now if he was definitely reaching under the seat to
8 any movement at all, you should find for the defense.

9 And you're people with life experience before you ever
10 came here. Did anyone think, as bad as this scenario is, that
11 if someone's surrendering and they move their hand at all, even
12 in an apparent attempt to maybe get down or some movement,
13 unless their hand is close to a weapon or about to grab a
14 weapon, you kill them? I don't think anybody believed that
15 then or believes that now.

16 So when you are really deciding what the issue in this
17 case is, I hope that the issue is if it looked like he's
18 reaching for a gun, hey, I'm going to be the first one to say,
19 why shouldn't -- if that's really what it was -- but I have to
20 tell you something: I think, and there has been no evidence to
21 the contrary, that all the officers there were trained on when
22 to use force. Every officer there. They learn it in the
23 police academy. They learn it on the job. That is part of
24 their expertise. If someone is reaching for a weapon or has a
25 weapon under the facts of this case, a trained police officer

1 is trained to shoot. Mr. Cameron told you. He talked about
2 training and training and training.

3 And by the way, I have to tell you and some of his
4 comments were somewhat scary because Mr. Cameron would have
5 everyone shooting everyone. But be that as it may, one officer
6 shot. That is important in this case. Now does that mean, as
7 Mr. Loeb's suggested, that he should confer with the other
8 people? Of course not. But if they all were looking at the
9 same thing and all knowing what they knew on that police radio,
10 if he had really appeared to be reaching for a weapon, two,
11 three or four officers would have fired at the same time. They
12 didn't. And that speaks volumes. I mean, it would be
13 different if there was only one officer there. Or if no one
14 else had their gun pointed at him. Or if they were all so
15 poorly trained they didn't know it.

16 So if we believe any of the following witnesses,
17 shouldn't we find for the defendants? Some facts are
18 undisputed. He didn't have a gun in his hand. He didn't have
19 a gun on his body. We know in the area he was reaching at
20 least now there was no gun. Even if someone said he was
21 reaching towards the seat.

22 Officer Paine and Sergeant O'Malley, to say that they
23 may be a little biased..., they're defendants. I'm not going
24 to stand up here and call anyone a liar, including them. But
25 they may be a little bit biased as to what they've said, even

Summation - Galipo

1 by the time of their first Homicide statement they had an
2 attorney, they had a representative. I mean, this is a formal
3 process. And what do you think they're going to say at the
4 time of their Homicide statement? Meet with the lawyer and
5 say, Just tell them that you overreacted and you shot the guy,
6 even though you didn't think he was reaching for a weapon.

7 Oh, okay. Or do you think they might say, Well, did
8 he have a gun on him? No, on his person? No. Was he in or --
9 well, just say he looked like he was reaching.

10 And let me tell you something, and I'll read it
11 perhaps first thing Monday morning. But Officer Paine clearly
12 says in his deposition, and Officer Paine must have had a view
13 of him. We know he shot him. He's not in that position.
14 Which is also pretty interesting. Don't you think if they
15 really wanted to nail down that he was in that position, they
16 would have shown the folder to Mr. Campos when he was here?
17 Why didn't they? Because they didn't know what the heck was
18 going to come out of Mr. Campos's mouth next.

19 Officer Stearns. You may recall there was reference
20 to Officer Stearns' Homicide statement where he never even said
21 the person was sitting on the floorboard. What's the purpose
22 of giving a statement four or five hours after something
23 happens but giving all the important details when it's fresh in
24 your mind? Which is another amazing thing.

25 You may remember Officer Mason who supposedly pulled

Summation - Galipo

1 the body back and saw the gun. Can I say that gun's planted?
2 No. I'm not going to stand here before you and say, I can
3 prove to you that there's some master conspiracy here and that
4 gun was planted. Could it have been moved from one area to
5 another? Maybe. I don't know. It's shocking that officers
6 with this training in these circumstances would have not seen
7 it. Even up to the time they left the scene. Even up to the
8 time of the statement.

9 And you know what's amazing and you might remember
10 this: Officer Mason said, Yes, I saw the gun there, and I
11 asked him and he admitted it. Did you review your Homicide
12 statement? Yes. At the time of your Homicide statement, did
13 you tell them that you saw a gun in the door when you
14 approached the door and pulled the body away from the car? No.
15 And then the comeback was, Well, you weren't asked that
16 question.

17 But almost at the end of every statement they're like,
18 anything else you think's important? How could that not be
19 important?

20 Officer Elieff comes in, and I feel for him. Don't
21 get me wrong. The poor guy. That's a scary position to be in.
22 But his -- and then what did you see, like I said before, he
23 was so precise. I mean, who would describe someone's body
24 Position 3 years later, and what was his position? His left
25 butt cheek, his left buttock was on the floorboard, but not his

1 right, and he was...." I mean, it was almost like rote. Did
2 you meet with Mr. Loeb's recently? Yes, as a matter of fact, I
3 did.

4 So how credible is that?

5 And we know he didn't shoot.

6 Officer Warnke. You know, something interesting about
7 Officer Warnke I thought of when Mr. Loeb's was making his
8 comments. Which might tell you a little bit about his body
9 positioning. He said Officer Warnke was considering shooting
10 through the door. That might tell you something about his
11 point of view from where he was standing. If he was
12 shooting -- going to shoot through the door, that would mean he
13 couldn't see presumably on the other side of the door. And if
14 Officer Paine was three feet or five feet to his right, it
15 might give us a little information as least of Officer Paine's
16 perspective.

17 The reason, of course, from our position he raised
18 that issue, you know the whole trajectory thing, I
19 understand -- I can't prove that the door was open 55 degrees.
20 But what we do know is that that's the degrees that Mr. Jason
21 did his tests at. If you're an expert and want to duplicate,
22 he did it at 55 degrees with the model. But the thing that
23 was -- you may find troubling, is that if an expert makes a
24 diagram and positions a vehicle and positions a door and turns
25 it over to the attorney they've been working for for a long

1 time and then changes it, not in terms of the color of the
2 cars, but in terms of the angle of that door, and didn't expect
3 the other attorney to have that, you weren't supposed to ever
4 see that, you have to consider that.

5 We know Officer Warnke didn't fire. Is there any
6 suggestion he just got off probation? In fact, for whatever
7 reason, they didn't even take cover. Now, that's not where the
8 case starts and stops. Because perhaps when they got to that
9 position, it looked like he was surrendering and they were
10 comfortable there. But it at least tells you what their mind
11 frame was as to whether or not they thought he had a gun or
12 not.

13 Dr. Smith told us that this could have been the first
14 shot, the abdomen or chest, and it could have happened that
15 way. Now it's true that he likes the sitting position and he
16 said a lot of things favorable to the defense, but one would
17 expect it perhaps, he has the same employer. But he said it
18 could have happened that way too.

19 Mr. Campos I'll get to.

20 Ms. Wilson, now it's true, her testimony was a little
21 bit different, but you might remember when Mr. Clark was on the
22 stand, and I said, Let me give you some hypos. Because I knew
23 different witnesses had different stories and I knew you as a
24 jury, one of the things you're going to talk about, what do you
25 think really happened? And once you figure that out. You say

Summation - Galipo

1 what's the law? Let's work through this, fine.

2 But she has his hands going, as you saw with the blue
3 "X", on the side of the seat. And I think it's pretty clear
4 that that area certainly was visible to the officers when he
5 walked away from the car, and nobody said they thought there
6 was a gun in that area. Not to the side of the seat. So if
7 that's where his hands went, and they were visible, did anyone
8 here say, "Kill him?" Did anyone here say that the officer was
9 about to shoot at that very moment, so kill him right then?

10 I hope not. I don't know. That's something you're
11 going to have to think about.

12 Now, Mr. Campos. And I must tell you that Mr. Jason
13 was on for about a whole day with Mr. Loeb, and he's basically
14 telling everyone, telling the Court and the jury, this is how
15 it had to happen. This is it. You know, I don't need any
16 witnesses to tell you how it happened. Well, one take on it
17 you may have is the reason that he didn't rely or testify he
18 didn't rely on any of the depositions or statements is because
19 they all or most of them were all contrary to his findings. So
20 then I would say, well, how about all these witness statements
21 that said it happened a different way? How about Officer
22 Paine's deposition on page so-and-so? When he says the person
23 wasn't even in that position?

24 Mr. Campos -- I don't know if I should do this now
25 or -- I think what I'll do is refer to Mr. Campos first thing

1 on Monday morning, because I'll be more organized.

2 But I can tell you this: I'm going to read to you
3 exact -- exact -- and I'll give out page numbers -- question
4 and answer of Mr. Campos. And I can tell you I read it again
5 during Mr. Loeb's closing, and he has a hands up, a first
6 movement he says to the left, and then the hands back up, and
7 the first movement, the hands did not go inside the car, did
8 not touch anything inside the car, and he says within a second
9 of the second movement, the shots. And he was asked
10 specifically, did the hand -- were the hands touching anything
11 in the car at the time of the second movement? No. Could you
12 see the hands at the time of the second movement? Yes. Did
13 the hands ever go below the waist? No.

14 So I'll read it carefully for you because I think it's
15 pretty important.

16 And the other thing that was interesting from Officer
17 Paine's testimony, you remember yesterday I was going about
18 the -- I guess it's called the A post where the left hand hit
19 the A post and went down, but Officer Paine's testimony, and
20 this is referring to the time just before the shooting, "At
21 that point is his back to the driver's seat?" Answer: "Yes."

22 That should tell you right then he couldn't have been
23 in that position when he fired. If his back's towards the
24 driver's seat.

25 At that point I asked him point black, Was he sitting

Summation - Galipo

1 on the floorboard? I don't believe so. Did you have a clear
2 view? Yes.

3 Now I'm asking him, Well, how much time between the
4 first turn to the left and the second turn? He said, he's
5 estimating, he's not sure, maybe 5 to 10 seconds. Second time
6 he shot him.

7 Let's see -- now this is an interesting question.
8 Because we know by his own admission that he, from his
9 testimony, that Mr. Boyd went to his left and came back, and he
10 could see both of his hands and he didn't shoot him. Because
11 he could see he had nothing in his hands.

12 And so I said, Okay, how much time passed from the
13 time he turned to his left the second time until the time you
14 shot him? Maybe a second.

15 This is where I'm getting into this overreaction.

16 And then I'm following up. I say: "Sure?"

17 He says, "Say that again."

18 I say, "Sure? You told us I believe that it was about
19 a second in between the time he turned to his left a second
20 time and you shot. Is that correct?

21 "A About that.

22 "Q Okay. And you told us that the first time he turned to
23 the left, he turned back within a second, approximately,
24 correct?

25 "A That's my recollection."

Summation - Galipo

1 So you know, these quick movements and coming right
2 back is a lot different than getting in a car and look like
3 you're reaching around for a gun. And that's what I'm hoping
4 you'll focus on. Because if the question you're going to ask
5 yourself, did he move at all, did he move at all, shoot him,
6 well, you know, I probably don't have a chance. If he moved at
7 all. But you're not going to get anything in this instruction
8 that says if someone moves, you can shoot him.

9 Some other things that weren't covered in the blood
10 evidence, and I don't want to go into details, to expect
11 someone to make all these different hand movements after
12 they're shot, you have to decide what you think about that. I
13 couldn't imagine someone being shot and putting their hand down
14 and moving it this way and moving it that way.

15 All right. Let me address these other questions real
16 quick. And then I'll -- I'll get some rest, and on Monday
17 morning I'll be -- okay.

18 Did the plaintiffs -- this is painful even to read
19 these questions -- did the plaintiffs really think we were
20 paying so little attention to the evidence that plaintiffs
21 could refer, repeatedly, to Boyd pointing a gun at Hogan's face
22 and repeatedly threatening to kill her as an innocent car
23 trade?

24 Well, I don't recall -- I'm not downplaying it, so
25 that you're clear of that, again. I think no matter how it

Summation - Galipo

1 happened, it could be viewed as a significant event. But that
2 doesn't justify a killing on Larch Way where someone might find
3 that he wasn't reaching for a gun at the time he was killed.

4 Now, the only thing that was strange is in part of the
5 testimony read, and I'll refer to it Monday morning, is that
6 she testified she got the impression maybe that he wanted me to
7 leave my keys in my car, and I thought maybe he wanted my
8 car -- which was kind of strange. Of course, and then I
9 started thinking about his paranoia, that someone's following
10 him and let's switch cars and who knows. But you know what, it
11 doesn't matter. It really doesn't matter.

12 The ballistic evidence. I can't tell you. I told you
13 that in the beginning. I can't tell you that wasn't his gun.
14 I can't say that. It's just mind-boggling in some ways that
15 gun being in there and no one seeing it. But you know what, at
16 the end of the day, I guess we can put that on the red herring
17 list, because no one saw it. And we all know he wasn't
18 reaching for it. Which really kind of gets the suicide-by-cop
19 theory in a strange way, because if the guy really wanted to be
20 shot, why not, you know, reach for the gun. Make it look good.

21 Anyways, now, I'll address these two, and then if it's
22 okay with everyone, we'll take our break. Shouldn't we think
23 it's outrageous that Marylon Boyd went to Joe Campos's home and
24 attempted to get him not to testify? Why shouldn't we believe
25 that she also attempted to influence other witnesses?

Summation - Galipo

1 Now, this is an example, at least from plaintiffs'
2 perspective, of trying to distract you from what happened on
3 Larch Way. Trying to get you not to like Marylon Boyd or to
4 suggested something really bad. I mean, this really is
5 suggesting that she was threatening Mr. Campos. I think you
6 all know, you heard the evidence, Mr. Campos was subpoenaed
7 multiple times for his deposition. He didn't want to go. It
8 had nothing to do with Marylon Boyd. Even got a question and
9 answer, which I'll read Monday. The reason he didn't want to
10 go to all those depositions is mom didn't want him to go. He didn't
11 want to go. It had nothing to do with Marylon Boyd. I mean,
12 perhaps when the Court wanted to find out why he didn't show
13 up, it might have been convenient to say, Well, she said I
14 didn't have to go, so I just thought I didn't have to comply
15 with all these subpoenas.

16 I can assure you from the evidence nobody was
17 threatened.

18 MR. LOEBS: Your Honor, that's inappropriate,
19 Mr. Galipo, especially on this topic. Move to strike his
20 comments, your Honor.

21 THE COURT: Well, when you say nobody was threatened,
22 I can assure you --

23 MR. GALIPO: There is no evidence.

24 MR. LOEBS: Your Honor, motion to strike.

25 MR. GALIPO: I'll reword it if I need to.

Summation - Galipo

1 THE COURT: You can't testify from counsel table.

2 MR. GALIPO: I'll reword it.

3 THE COURT: All right.

4 MR. GALIPO: Mr. Campos never said, ever, that Marylon
5 Boyd threatened him. He said he heard her say, he claims. She
6 denied it, that --

7 MR. LOEBS: Your Honor, that's inappropriate. There's
8 no testimony as to that. She didn't testify on the subject.

9 THE COURT: Ms. Boyd, I don't believe, testified about
10 this matter. To the extent she may have, I'll overrule and --
11 if the jury can consider this.

12 MR. LOEBS: She did not testify.

13 THE COURT: Then the jurors will keep that in mind and
14 check their own record on that regard.

15 MR. GALIPO: I thought she may have, and it's been so
16 long, I can't say for sure. You'll have to go by your notes or
17 your recollection.

18 But what we do have is Mr. Campos saying, Well, she
19 said I didn't have to go. His claim. And so I didn't go.

20 All these witnesses, by the way, and this is
21 important, they all had all kinds of statements. You gathered
22 that from the evidence. From very soon after this happened
23 there were all kinds of witness statements. It's not like two
24 or three years later someone's trying to be influenced. They
25 all gave statements. And you can rest assured that if any of

Summation - Galipo

1 these witnesses gave favorable statements to the defendants,
2 they'd be here. They would all be here telling you, This guy
3 was reaching under the seat of the car, we all thought he was
4 reaching for a gun.

5 MR. LOEBS: Objection, your Honor, it's an
6 inappropriate reference to facts not before the jury.

7 MR. GALIPO: Well --

8 MR. LOEBS: Inappropriate insinuation about what
9 witnesses said.

10 MR. GALIPO: Would you like me to reword it, your
11 Honor?

12 THE COURT: Just looking at what you said.

13 I don't think you can say who gave witness statements,
14 unless it's in the evidence. If you want to argue that a
15 witness who was present during any of the events could have
16 been called by either party, then you can do that. But you
17 cannot put before the jury that there were statements. There's
18 no evidence that the -- as to those statements, to my
19 knowledge. And if there are not, then it would not be
20 appropriate. I don't even know if there are any statements.
21 So -- okay. And neither do the jury.

22 MR. GALIPO: Let's put it this way: I think one can
23 make an inference from the evidence that there was a thorough
24 investigation, including talking to any potential witnesses.

25 Lastly, and then I'll break for the day, if it's okay.

Summation - Galipo

1 Can we believe anything Marc Firestone says given that he
2 formed his opinions before he even looked at any photographs
3 and given that he never looked at any physical evidence, never
4 inspected the SUV, never went to Larch Way?

5 Let me break this down. I already addressed that.
6 Listen, I will concede that clearly he should have had
7 photographs earlier on. But you might recall he looked at an
8 exemplar vehicle, and I was trying to get some ideas from the
9 evidence he talked about, about the configuration. By the time
10 he testified in court, and he had many hours of deposition
11 testimony, he had looked at photographs, he had looked at a lot
12 of evidence. In part, he was addressing the opinions of
13 Mr. Jason. Because that was part of what he was asked to do.

14 We know Roger Clark, for example, saw all the
15 evidence, went to Larch Way, saw the car. Mr. Cameron, we
16 never heard did that. Does that mean we throw everything they
17 say out the window? How many experts here didn't go to the
18 scene, didn't look at the car, didn't go through every piece of
19 physical evidence? Does that mean we should disregard
20 everything they say? It's a fact to take into consideration
21 for sure. But I don't think it totally means that -- one
22 inference from Dr. Firestone's testimony was some of it was a
23 matter of geometry. Depending on where someone was positioned,
24 what trajectories and what angles.

25 So, I wanted to answer those questions. I appreciate

Summation - Galipo

1 your patience all day today. I know it's been a long day. I
2 will conclude hopefully in fairly short order on Monday
3 morning, and then you can finally start your deliberations.

4 Thank you all very much.

5 THE COURT: Thank you, Mr. Galipo.

6 Ladies and gentlemen, our schedule for Monday then
7 would be to start at our regular time of 9 o'clock, complete
8 Mr. Galipo's closing statement. Then I will have about a half
9 hour of instructions to give you orally, which I'm required to
10 do. You don't necessarily have to take notes during that part
11 because you will each have a set yourself of the instructions
12 in writing after you go in the jury room. We'll provide those
13 to you so that you can refresh your recollection as to what was
14 given to you. I don't want to give them to you now. I'm
15 giving them orally because one person will be flipping and
16 looking and going back and may miss whatever I have to say, but
17 you will have them so you don't have to commit them absolutely
18 to memory just because I'm saying them orally in court.

19 Then you'll also receive the exhibits that have been
20 admitted, and if you don't receive an exhibit that was
21 commented upon, it's either because it wasn't admitted or there
22 was some reason not to send it in to the jury room.

23 I'll be talking to the lawyers about that. You may
24 not get them immediately when you get to the jury room because
25 we may not have resolved all that. I'll try and do some of

1 that after you leave this afternoon with counsel. But until
2 all arguments are concluded, we won't put all the exhibits
3 together.

4 So in any event, we're not going to see you until
5 Monday. Have a very nice and safe weekend. And then we'll
6 resume at 9 o'clock.

7 Please remember my admonition in its entirety. Again,
8 this is a fairly sensitive point at this break in the
9 proceedings.

10 Thanks again.

11 Counsel please stand by.

12 (The jury exited the courtroom)

13 (In open court; jury not present)

14 THE COURT: The jurors have left the courtroom. There
15 are certain things I think that have to be put on the record.
16 This is as good a time as any because I don't want to lose time
17 on Monday. It was four hours of closing argument essentially
18 by the defendants, and I don't remember Mr. Galipo's length,
19 but the jurors were -- I guess a couple of hours, but whatever
20 we had a lot of time to -- with the jury.

21 So one of the matters is the matter of the
22 instructions in the verdict form. The Court is prepared to
23 instruct the jury orally and to provide the jurors in written
24 form a set of instructions that represents a distillation, an
25 agreement by counsel of what is proper to be given at the close

1 of this case. Each side originally had asked for certain
2 separate instructions. And also the parties had submitted
3 agreed-upon joint instructions. As it turned out in our
4 off-the-record instruction conference there were certain joint
5 instructions that either one party or the other didn't agree
6 to, or that both parties agreed shouldn't be given, at least in
7 the form they originally agreed to.

8 There were also various rulings the Court made that
9 affected the propriety of giving any particular separate
10 instruction. And so the question is whether the parties agree
11 that the Court can give the instructions that are currently
12 titled "Jury Instructions" and are numbered 1 through 29?

13 MR. WIENER: Yes, your Honor.

14 MR. GALIPO: Yes, I agree with the ones that are in
15 the packet. The only other issue was that, and I think the
16 Court's adjudicated it, was regarding the negligence and
17 contributory negligence.

18 THE COURT: Yes, if the Court determined that a
19 particular cause of action or a particular defense, if that was
20 the case, was not proper to submit to the jury, then by
21 agreeing to the instructions in the current form, the party who
22 did not wish to give up that particular cause of action or
23 defense is not deemed to have waived their objection to that
24 particular ruling by the Court not to submit that matter to the
25 jury. But once that matter is not being submitted to the jury,

1 in particular and as an example the cause of action for
2 negligence, once it's being submitted, then that party is not
3 asking that the Court instruct on a cause of action that the
4 Court isn't giving, but they're not giving up their objection
5 to the Court not giving it, that particular cause of action to
6 the jury.

7 I also have a verdict form, and that verdict form was
8 again a matter of discussion, and I believe that the current
9 form as set forth in the format that was prepared for
10 everyone's use, ultimately by defendants' office, is agreeable
11 to both sides.

12 MR. GALIPO: That's correct.

13 THE COURT: Is that correct?

14 MR. GALIPO: Yes.

15 THE COURT: Mr. Loeb's? Mr. Wiener?

16 MR. WIENER: That's correct, your Honor.

17 THE COURT: Ultimately, the defendants took the
18 laboring on here in creating the packets of instructions on
19 their word processor.

20 MR. GALIPO: And I thank them for that.

21 THE COURT: And the Court appreciates their efforts in
22 that regard because there was quite a bit of discussion and
23 quite a bit of amendment to the instructions before we arrived
24 at the final set. So I wanted to get that clear.

25 Now I also heard reference during Mr. Loeb's closing

1 to the jury being able to play the tape of the chase in the
2 police communications line in the jury room. Does that mean
3 you both have agreed a tape player can go in there? Because
4 they're not going to play anything without a tape player.

5 MR. LOEBS: We have the TV, the actual exhibit. We've
6 agreed that could go in.

7 THE COURT: You put that in there and you have to send
8 a whole TV in that has to be set up? That seems like a rather
9 awkward situation.

10 MR. GALIPO: What we haven't talked about, but I would
11 recommend is the following: If they make a specific request
12 for it during deliberations, then we can figure it out. I'm
13 quite concerned if we send TVs and VCRs in there, they could be
14 spending a lot of time on that. I think we should wait for a
15 specific request.

16 THE COURT: If it were just on a tape, I could send a
17 tape player in. If you want to do that, that's a possibility,
18 to perhaps stave off them asking to hear something where the
19 shots are fired or whatever. But the TV I think is a bit much.

20 MR. LOEBS: We had a computer monitor they could play
21 it on. It's rather small. They can do the same thing, then
22 they could see the actual evidence.

23 THE COURT: No, I think that would be a way of
24 display. But it just becomes, I think, rather overemphasized,
25 if you want to put it that way.

1 I wouldn't disagree about the tape player if you have
2 it just on a cassette or some other way of just playing it that
3 way. But if we had the full-blown model here, then it might be
4 awkward. It's been played numerous times. We've played it in
5 opening, closings, and along the way more than once during the
6 presentation. Clearly if the jurors have any question about
7 what's on that tape, they can ask to have it played. Again.

8 But if you want to submit a small player and tape,
9 then I'd consider doing that.

10 MR. LOEBS: Okay, your Honor, we'll work on that over
11 the weekend.

12 THE COURT: Okay. Then as to the evidentiary matter
13 concerning the photos, you probably haven't had a chance to
14 finalize your discussion on that, Mr. Galipo?

15 MR. GALIPO: I will talk to Mr. Wiener about it.
16 We'll have it squared away by Monday morning.

17 THE COURT: As to what exhibits are actually in and
18 what aren't and what can go in the jury room, this has been
19 for, lack of a better word, a chaotic presentation as far as
20 the marking of the exhibits, and I really don't know at this
21 time exactly where all the exhibits are and what they've been
22 marked with since they weren't formally premarked in most
23 instances and were marked on the run by counsel in the middle
24 of their respective examinations.

25 So I think that you're going to have to get together,

1 it might be appropriate for you to come maybe a half hour early
2 on Monday, and try to figure out what you agree is in and out.

3 Would you need Miss Lucero for that? Because I don't
4 really want her to be here early if she doesn't have to. She's
5 hardly had any kind of break to do anything for the last six
6 weeks, and she has a lot of other work besides the work on this
7 case.

8 MR. GALIPO: I don't think so, your Honor. In fact,
9 she was kind enough I think to give both sides a list.

10 THE COURT: Her list?

11 MR. GALIPO: Yes.

12 THE COURT: Well, we could open the courtroom up at
13 8:30, and I think it would be a good idea to see what you've
14 got in and out of the case.

15 MR. GALIPO: I think the main question is going to be,
16 how many and what blowups, if any, to go in that the Court has
17 to decide, is the main issue.

18 THE COURT: In the main, I would think it would be
19 blowups of exhibits that are hard to follow in small form for
20 everybody. In other words, to pass around and are in some
21 fashion and have been used rather throughout the proceedings.
22 So that the jurors are used to seeing certain exhibits in
23 blowup form.

24 That I would think wouldn't be V5-01 and 02. Maybe
25 the one with the shadow car, I forget what that is. F-9 or

1 something.

2 MR. LOEBS: F-9.

3 THE COURT: None of these are in any logical series.

4 What do you think about U, whatever it is, 5 or
5 whatever, the one with the person in the car.

6 MR. GALIPO: I'd rather not have it in. Just because
7 it gives undue emphasis to that one position, and I think we've
8 had testimony that it was just general, not specific, and I
9 think it would be misleading to have it sitting there in the
10 jury room throughout the deliberations.

11 THE COURT: The only reason to use it or to give it,
12 and I'll think about it, is that it has played a certain role
13 in the case and it has been shown a lot to the jury, and if
14 they're in the jury room and one person tried to point
15 something out and nine people are crowding around a little
16 photo, it starts to get awkward.

17 Both of you have made quite a bit of that, you know,
18 photo, both in terms of trying to show where someone was, where
19 they could have been, independent of the model in the picture,
20 it's the one picture that kind of shows well the interior and
21 layout at least in great part, so if there are substitutes for
22 that where somebody can actually look at the car easily and
23 discuss as a group -- otherwise, I don't know they're going to
24 tack it up somewhere, put it in the middle of the table, and
25 crowd around or get close enough, and I think it's going to be

1 awkward. So there are a lot of features that show up better in
2 the blowup, whether it's, you know, the bolt thing or the -- I
3 don't know.

4 Now, any photo with the bloody bolt cover, the blood
5 on the floor, what's your view about that?

6 MR. GALIPO: I would be opposed to those, the blowups,
7 going in. The regular exhibits, fine. But all the blowups, I
8 would be opposed to.

9 THE COURT: I'll consider it. It may be appropriate
10 just that go in as a single exhibit.

11 MR. LOEBS: That's fine, your Honor.

12 THE COURT: I don't know that the jurors all have to
13 scrutinize, and it's hard really -- does anything show up
14 better in the blowup? Well, you agree, so...

15 MR. LOEBS: Yes.

16 THE COURT: All right. I was just wondering for the
17 ease of viewing. Blowing up blurry isn't any better than small
18 blurry.

19 MR. GALIPO: I should be agreeing to the one blowup
20 where I don't think you can see the spatter, but I think it
21 would be fair to either do the group of them or none of them as
22 far as the blood. So my reference between the two would be to
23 not.

24 THE COURT: All out.

25 MR. GALIPO: As far as the blowups.

1 THE COURT: Are there any more blood blowups? Does
2 anybody want to put in blood blowups.

3 MR. LOEBS: No, your Honor.

4 THE COURT: So that's -- you're in accord on that.
5 Anything else that comes to mind in terms of blowups that may
6 be in dispute?

7 MR. LOEBS: Just that there is the one blowup, the
8 diagram that Mr. Jason did that you termed the robotic.

9 THE COURT: Oh, the robotics.

10 MR. LOEBS: We talked about that at length, and you
11 were very careful about how we discussed this issue, and we're
12 not offering that in evidence other than as it illustrates
13 Mr. Jason's testimony.

14 THE COURT: It's not being offered at all?

15 MR. LOEBS: That's what we discussed at the time, and
16 that's where we stand.

17 THE COURT: So that's not a concern. Anything else
18 that you can think of?

19 MR. GALIPO: The only other issue I'm wondering, if we
20 conclude with the argument, instructions, which we clearly will
21 first thing Monday morning --

22 THE COURT: I hope to.

23 MR. GALIPO: -- believe it or not, I have a trial
24 scheduled for Tuesday with pretrial conference in the afternoon
25 at 3 o'clock. So I'm wondering if I had Mr. Cunningham, for

1 example, stand in for me during deliberations, would the Court
2 have any thoughts on whether I could fly to LA in the afternoon
3 or --

4 THE COURT: Let me make a couple of suggestions. I
5 don't care how many lawyers are here for either side, but
6 whoever is here has to be fully knowledgeable about any issue
7 that might come up and prepared with the authority to make any
8 kind of decision on behalf of the client. I do not know that
9 you can saddle Mr. Cunningham with that particular set of
10 obligations. What I would recommend to you, do you have any
11 idea how long that conference might take?

12 MR. GALIPO: Well, not long. Maybe a half hour.

13 THE COURT: Okay. Let me just stop you right there.
14 Is there no way that you could -- or couldn't you contact the
15 judge and opposing counsel in that matter and see whether or
16 not they could conduct it by phone.

17 MR. GALIPO: Absolutely, I will try. We've already
18 been informing them of the situation. We were hoping we would
19 get finished by the end of the day today, but it didn't quite
20 work out.

21 THE COURT: No, I think that was out of your hands
22 once the defendants argument went for as long as it did. So I
23 would suggest that you try to do that by phone. I mean, the
24 alternative is essentially to say, Judge Chesney won't let me
25 out of here, and I really don't want to gratuitously interfere

1 with another court's proceeding. If we don't have to. So that
2 would be my thought as a compromise.

3 MR. GALIPO: I will try, and I can tell you that I've
4 had good past experience with this particular federal judge,
5 and I think if we -- I don't know if you know her, it's Judge
6 Virginia Phillips down in the Riverside federal court, but if
7 we need to place a call, we'll figure it out Monday morning.

8 THE COURT: You know, there's the attorney's lounge.
9 And I think that has some rooms that can be used relatively
10 privately.

11 MR. GALIPO: I would be willing to do it if they would
12 be, and we'll cross that bridge on Monday.

13 THE COURT: Certainly the Court, I'm sure, would
14 prefer to have you there in person. There's no question about
15 it. When's your trial supposed to start?

16 MR. GALIPO: Tuesday.

17 THE COURT: Okay. It's kind of a close pretrial
18 conference, isn't it? It's like part of the trial.

19 MR. GALIPO: What happened it was last week, but they
20 continued it because I was here.

21 THE COURT: And again, you might have considered
22 whether there was any way to set that up at the end of a day,
23 such as 4:15, but if it's a long conference -- when is it
24 scheduled for; what time, do you know?

25 MR. GALIPO: It's --

1 THE COURT: You don't remember?

2 MR. GALIPO: I believe it's 3:00. There's actually
3 two of them in the afternoon because I have two trials
4 scheduled one week apart, if you can imagine that.

5 THE COURT: I'm assuming these are more than one-week
6 trials.

7 MR. GALIPO: They're actually relatively -- several to
8 five day trials each. They're not like this thing.

9 THE COURT: In any event, you're a busy man. I
10 recognize that. Obviously in demand. All I can suggest is
11 that you make that first effort, because I really would not
12 feel very comfortable, as much as I like Mr. Cunningham, and I
13 have seen how he's done being tossed into the breach, but
14 there's a whole trial record here. He has not been there. We
15 may need your assistance in finding things. I don't want to
16 make those kind of decisions by the Court and the defendant,
17 and then have essentially a unilateral or bilateral as opposed
18 to trilateral decision on that.

19 MR. GALIPO: I will try to make arrangements, your
20 Honor.

21 THE COURT: With all that in mind, anything else
22 before we break to the weekend?

23 MR. LOEBS: Yes, your Honor. The issue that
24 Mr. Galipo raised in his closing where he stated Marylon Boyd
25 testified that she did not have this conversation with

1 Mr. Campos is completely false. She did not mention anything
2 about that. In fact, we raised that as a rebuttal issue
3 because we were concerned because he called Mr. Campos in his
4 case, we were concerned he was going to try to call Ms. Marylon
5 Boyd in his rebuttal case to address that issue. We argued to
6 the Court that that would be improper rebuttal and he couldn't
7 do that. Having failed to do that, he then recommended falsely
8 to the jury that she gave testimony. And we'd ask that the
9 Court do something appropriate in that regard with respect to
10 closing argument.

11 THE COURT: What's your thought about this,
12 Mr. Galipo? Ms. Boyd's testimony was interrupted, I think, in
13 some way by Mr. Clark. And then she was back on at some point
14 after the grandchildren. Mr. Campos, I think, came after she
15 did. So how and when did she address this point?

16 MR. GALIPO: I'm trying to see -- if I could have just
17 one moment.

18 THE COURT: Okay. Because if he came after she did,
19 how could she have commented about it unless she was, you know,
20 trying to head something off at the pass, and I don't see that
21 that happened.

22 MR. GALIPO: First of all, my recollection was that
23 there was commentary about it. I cannot specifically say
24 without looking. I certainly when I said that believed there
25 was. I think my client recalls general comments, but she

1 doesn't specifically recall. Obviously, I know they've been
2 having the transcript prepared. I don't know if they have the
3 notes --

4 THE COURT: Let me say this: Mr. Campos did testify
5 about this and was examined by you in that respect.

6 MR. GALIPO: Right.

7 THE COURT: And essentially took you out of the
8 picture at least as a speaker. I don't know if he took you out
9 in terms of a bystander or not, but he took you out of the
10 immediate conversation. But I don't know that there was ever
11 any expressed denial with respect to Ms. Boyd.

12 But let me say this: I'm not going to step in at this
13 point. These jurors have been taking extensive notes. These
14 jurors are, if they see that Marylon Boyd testified, and the
15 next witness is Joe Campos, and that she never got back on the
16 stand, I don't think that they would be so obtuse as to not
17 recognize that she didn't address the matter. And I don't
18 really want to pull this one point out and comment about it.

19 What I do want to comment about is that it is not
20 appropriate to inject one's own personality or personal views,
21 shall we say, personality is fine, you have lots of that, and
22 that's fine, Mr. Galipo, but your own personal state of mind in
23 the argument is not proper. The defendants sat back, and they
24 didn't object, even though I made it clear to them that the one
25 time I overruled their objection did not mean that you could

1 just get up and say, I think, I say, I did, it was my plan.

2 Okay.

3 Perhaps they figured they'd just come back and use
4 that to their own benefit. And they did comment to a certain
5 extent in that regard.

6 But at this point, it really is not proper for you to
7 put your personal spin on the evidence.

8 MR. GALIPO: I'll be careful to phrase it that this is
9 what the evidence shows on this point or this is the evidence
10 on that point.

11 THE COURT: You really can't say, I can assure you
12 there's no evidence out there. Or in my personal view, this
13 shot was unwarranted or things like that. It's not fair
14 argument frankly.

15 Now if they didn't like you, then probably the
16 defendants wouldn't care because they figured the jurors really
17 don't care what you have to say and what you think. But I'm
18 going to assume they do care, and in that regard it's
19 particularly important that you not make those kind of
20 comments.

21 So what else, about anything, before we break for the
22 weekend?

23 All right. Are you going to come in at 8:30 then and
24 square this away?

25 MR. GALIPO: Yes.

1 THE COURT: The reason I say that is these people are
2 really going to want to get going once they get into that jury
3 room, and if we keep them waiting for any protracted period of
4 time for all those exhibits, they're going to be unhappy.

5 MR. GALIPO: Can we go off the record for our court
6 reporter now or --

7 THE COURT: I think so.

8 MR. GALIPO: I just feel bad for her, she's been going
9 all day.

10 THE COURT: That's true. Okay. We're off record, and
11 that's it for this afternoon.

12 (Adjourned to Monday, September 24, 2007 @ 8:30 a.m.)

13 oOo
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Connie Kuhl, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in Case No. C 04-5459 (MMC), Marylon Boyd, et al., City and County of San Francisco, et al., were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.



Connie Kuhl, RMR, CRR

Thursday, December 20, 2007